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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK I. SOKOLOW, et al.,

Plaintiffs,

v.

04 CV 397 (GBD)

PALESTINE LIBERATION
ORGANIZATION, et al.,

Defendants.

New York, N.Y.
January 15, 2015
9:30 a.m.

Before:

HON. GEORGE B. DANIELS,

District Judge

APPEARANCES

ARNOLD & PORTER LLP
Attorneys for Plaintiffs

BY: KENT A. YALOWITZ
PHILIP W. HORTON
TAL MACHNES
SARA PILDIS
CARMELA T. ROMEO
RACHEL WEISER

MILLER & CHEVALIER, CHARTERED
Attorneys for Defendants

BY: MARK J. ROCHON
LAURA G. FERGUSON
BRIAN A. HILL
MICHAEL SATIN

Also present: RACHELLE AVITAL, Hebrew interpreter
RINA NE'EMAN, Hebrew interpreter

F1F3SOK1

(In open court; jury not present)

THE COURT: Let me first address, I received a letter from the defense with regard to Tirawi.

Mr. Hill, I know what your position is. I have a couple of questions for Mr. Yalowitz.

Mr. Yalowitz, you have a video, and my understanding is the video is of Mr. Tirawi making during a lecture.

MR. YALOWITZ: Correct.

THE COURT: It was made on July 23 of 2009.

MR. YALOWITZ: Certainly 2009, your Honor.

THE COURT: July of 2009, possibly? 2009.

MR. YALOWITZ: Certainly, I'm not denying July 2009. I just don't know it. But definitely 2009.

THE COURT: At the time he was not a PA employee.

MR. YALOWITZ: I disagree with that.

THE COURT: Okay.

MR. YALOWITZ: And I have a witness who can talk about that in the courtroom, your Honor.

THE COURT: He was giving a lecture to whom?

MR. YALOWITZ: He was giving a lecture to military academy students.

THE COURT: When you say military academy students, these are?

MR. YALOWITZ: Like their version of West Point. So he is in charge of West Point, and he's giving a lecture to the

F1F3SOK1

1 cadets.

2 THE COURT: Of the PA's unit.

3 MR. YALOWITZ: Correct.

4 THE COURT: You say his job with the PA at that time
5 was what?

6 MR. YALOWITZ: Chairman of that military academy.

7 THE COURT: And you're offering this to demonstrate
8 what?

9 MR. YALOWITZ: To demonstrate number one, Tirawi's --
10 to demonstrate that it is more likely, based on Tirawi's own
11 statements, that he was involved with two of the terror
12 incidents in this case to which he has been linked by
13 documentary evidence. Number one. And number two, to
14 demonstrate that it is more likely than not that the PA, by
15 employing an individual like Tirawi, who makes speeches like
16 that, had a policy in favor of supporting terror incidents.

17 THE COURT: What statement in this video makes it more
18 likely he was involved in these incidents?

19 MR. YALOWITZ: The whole video is encouraging people
20 to commit violence.

21 THE COURT: Do you think that the conclusion is that
22 most or all people who encourage people to engage in violence,
23 that it is more likely than not that they were involved in
24 these incidents?

25 MR. YALOWITZ: Well, you say all people. I wouldn't

F1F3SOK1

1 agree with "all people."

2 THE COURT: Most people?

3 MR. YALOWITZ: But I think that, that in combination
4 with other evidence, this is a relevant and probative piece of
5 the puzzle for the jury. And a significant part of my evidence
6 linking Tirawi to these incidents, not all of it, but a
7 significant part, is in the form of statements of his
8 co-conspirators. Which, at least so far, the Court has said
9 you're inclined to keep out.

10 THE COURT: So how do you intend to make that link?

11 MR. YALOWITZ: We can make it through experts. We
12 have some documentary evidence which the Court has ruled will
13 come in.

14 THE COURT: So give me an example, and I just had it
15 from the letter, I don't know if this is the complete video
16 statement. Give me the example from that statement or part of
17 the statement that you say is significantly probative of his
18 involvement in these acts.

19 MR. YALOWITZ: What he's saying is --

20 THE COURT: Just quote it to me.

21 MR. YALOWITZ: It is the whole statement.

22 THE COURT: You can't do that to me. That doesn't
23 work for me. Give me some word that the jury is supposed to
24 use to say that it makes it more likely than not that he was
25 involved in these particular terrorist attacks. Give me an

F1F3SOK1

1 example.

2 MR. YALOWITZ: All right. An example. "Jerusalem,"
3 which is where these terrorist attacks took place, "Jerusalem
4 needs thousands of martyrs."

5 THE COURT: Okay.

6 MR. YALOWITZ: And then, then at the bottom, he's
7 talking about two symbols. One of the symbols is Jerusalem.
8 So these are the two symbols, one being Jerusalem, that you
9 have chosen as the title of this course. These two symbols,
10 one being Jerusalem, "require blood, action, efforts,
11 resistance, and Palestinian unity."

12 Those are two examples, your Honor.

13 THE COURT: Let me turn to Mr. Hill. Mr. Hill, first
14 of all, there is a factual dispute here. They claim he was a
15 PA employee at the time the statements were made, and you say
16 he was not.

17 MR. HILL: He was not, your Honor. If Mr. Eviatar is
18 the witness, Mr. Eviatar as an Israeli government employee,
19 will not have a factual basis to say who the PA did or did not
20 employ at the time.

21 THE COURT: Up to what time, when did his employment
22 terminate?

23 MR. HILL: My colleague tells me 2008, your Honor.

24 THE COURT: What is the relationship between the
25 Palestinian Academy for Security Sciences and the PA?

F1F3SOK1

1 MR. HILL: That is a school affiliated with the PA.

2 THE COURT: His former position?

3 MR. HILL: He was the head of the General Intelligence
4 Service during the relevant period.

5 THE COURT: GIS?

6 MR. HILL: Yes, sir.

7 THE COURT: Is there a direct connection between the
8 academy and GIS?

9 MR. HILL: No.

10 THE COURT: They're not people who are trained to be
11 in the GIS?

12 MR. HILL: No, sir.

13 THE COURT: This is the first day I am aware of this
14 video. When did you become aware of this video?

15 MR. HILL: It's on my list, your Honor. This document
16 was first produced to me on December 22, 2013, so just over a
17 year after the close of fact discovery. Even though it existed
18 prior to the close of fact discovery, obviously.

19 THE COURT: You say in your letter that the plaintiffs
20 described this exhibit as a video clip in which the PA's former
21 General Intelligence Service and Fatah leader gave a lecture.
22 What was his role with regard to Fatah?

23 MR. HILL: I believe he is a member of the Fatah -- I
24 forget what the name is -- central committee. I may have the
25 name wrong.

F1F3SOK1

1 Central committee is the name.

2 THE COURT: Previously and currently, as far as you
3 know?

4 MR. HILL: I believe he is currently a member. That's
5 an elected position within Fatah.

6 THE COURT: Let me just turn back one more time.
7 Mr. Yalowitz, is there some reason that you described him as a
8 former General Intelligence Service leader and you describe him
9 now as a current employee?

10 MR. YALOWITZ: Because his job was, until 2008, his
11 job was he was in charge of the General Intelligence Service.
12 Call it for analogy CIA. Then he became, from 2008 to 2009, he
13 became special advisor to the -- special security advisor to
14 the president of the PA. Then after that, he became, according
15 to our information, chairman of this military academy.

16 THE COURT: Show me that proof.

17 MR. YALOWITZ: Would you stand up, Mr. Eviatar. Can
18 we put him on?

19 THE COURT: No. I want to know where that information
20 comes from. I want to know what documentation is being relied
21 upon to say he has that position.

22 MR. YALOWITZ: His basis is Tirawi's own Facebook
23 page.

24 THE COURT: His Facebook page says --

25 MR. YALOWITZ: That he's chairman of this military

F1F3SOK1

1 academy.

2 THE COURT: That information was put on his Facebook
3 page when? Do you have that Facebook page?

4 MR. YALOWITZ: I need to consult, your Honor.

5 THE COURT: All right. So the basis on which you say
6 he was an employee of the PA in 2009 is his Facebook page from
7 when?

8 MR. YALOWITZ: I need to consult, your Honor. I don't
9 know. May I?

10 THE COURT: You can consult.

11 MR. YALOWITZ: Thank you.

12 (Pause)

13 MR. YALOWITZ: Your Honor, Mr. Eviatar reports to me
14 that if you go on his Facebook page today, Tirawi's Facebook
15 page, he has his CV. And on his CV he says "from 2009, I have
16 been chairman of this military academy."

17 THE COURT: Okay. And that's Mr. Eviatar's only basis
18 to believe that he's currently a PA employee?

19 MR. YALOWITZ: I think the defendants have just
20 acknowledged that he is associated with this military academy.

21 THE COURT: They acknowledge he gave a lecture.

22 MR. YALOWITZ: I think they acknowledge -- their
23 position is he's not chairman, he is a special advisor.

24 THE COURT: Well, is it your position that he is an
25 employee?

F1F3SOK1

1 MR. YALOWITZ: He's chairman. I don't know whether
2 they pay him or somebody else pays him. But my position is I
3 believe him when he says he's chairman.

4 THE COURT: Okay. This videotape --

5 MR. YALOWITZ: Your Honor, my position also, well, I
6 know you have a view and I don't want to belabor it.

7 THE COURT: Look, as I always say, best decisions
8 aren't made by smart people, they're made by informed people.
9 Give me as much information as you want to give me, and I'll
10 give you my best judgment.

11 MR. YALOWITZ: My core issue is I'm not offering this
12 for the truth. I'm offering it to show his state of mind and
13 to show the policy of the PA.

14 THE COURT: Why would his state of mind in 2009
15 reflect the policy of the PA, if he's no longer a PA employee,
16 even if he is associated with them?

17 MR. YALOWITZ: I think it is a reasonable inference
18 that his state of mind in 2009 is -- where he says "we need
19 blood and action" is reflective of his state of mind in 2002
20 when he was sending suicide terrorists into the territory of
21 Israel. I think that's a fair inference the jury could draw.

22 I'm not offering it to prove that they need blood and
23 action. I'm offering it to prove that this is a guy who
24 believes they need blood and action. So that's my position.
25 The fact that he's -- the truth is, we got wrapped around the

F1F3SOK1

1 axle of what was his position at that time. But I'm not
2 offering it to prove that it's true and therefore they admitted
3 it. I'm offering it to prove this is who that guy is.

4 THE COURT: All right.

5 MR. YALOWITZ: So I just want to be clear on that.

6 THE COURT: Sure. This videotape is inadmissible for
7 that purpose.

8 MR. YALOWITZ: All right.

9 THE COURT: It is made at a time -- I can be very
10 specific -- at least seven years after the incidents at issue.
11 What his opinion was at that time has minimal, if any,
12 probative value. It is clearly outweighed by the prejudicial
13 effect of the nature of the statements. If the statements in
14 2009 were that "I am proud that I was a leader of the attacks
15 that happened back in 2002," then I would say that that would
16 be an admissible state of mind, not necessarily admitted for
17 its truth. But that's not what it says. It makes no reference
18 to any attacks. It is the kind of heightened rhetoric outside
19 the relevant time period that we discussed otherwise. And
20 under these circumstances, it would be inappropriate, even if
21 there was some slight probative value with regard to these
22 statements and his state of mind in 2009. It would be
23 inappropriate to attribute his statements and his state of mind
24 in 2009 to the PA and the PLO in 2001 and 2002.

25 So, for those reasons and other reasons, primarily

F1F3SOK1

1 though, I find that this is not admissible and does not make it
2 more likely than not that these statements reflect evidence of
3 his participation in the acts at issue.

4 MR. YALOWITZ: Thank you, your Honor. I have an issue
5 with regard to the videos, your Honor.

6 THE COURT: Let me hear from Mr. Hill.

7 MR. YALOWITZ: He wants to go on to a new topic I
8 think.

9 THE COURT: You want to go into a new topic too.

10 MR. YALOWITZ: I do.

11 THE COURT: So you want to go first?

12 MR. YALOWITZ: It's all right. As your Honor wishes.

13 THE COURT: I don't wish.

14 MR. YALOWITZ: You get to decide.

15 MR. HILL: I just wanted to note we do have a issue
16 with one of the exhibits that may be used with Mr. Eviatar. It
17 is Exhibit 212.

18 THE COURT: In terms of timing, do you have an
19 approximate time that you will use with this witness who is on
20 the stand?

21 MR. ROCHON: I think it will be less than 45 minutes.

22 THE COURT: Are you finished with your direct
23 examination? Did you have further questions?

24 MR. YALOWITZ: No, I'm finished with my direct, your
25 Honor. If I could just flag one other issue for the Court. I

F1F3SOK1

1 sent a letter January 12 with regard to, I don't know, about
2 eight or 10, maybe 15 videos, something like that. We gave the
3 Court a disc of it. 224 was one of those videos. And at some
4 point in the next day or two, I think I'd like the Court to
5 carve out time to go over them, because there are a number of
6 them we are going to want to use.

7 THE COURT: You have to remind me the nature of the
8 current dispute about the videos.

9 MR. YALOWITZ: I'm not sure that the defendants have
10 responded.

11 THE COURT: Right.

12 MR. YALOWITZ: But I just --

13 THE COURT: Is it a dispute? I wasn't aware there was
14 a dispute.

15 MR. ROCHON: Yes.

16 MR. YALOWITZ: There always seems to be, your Honor.

17 MR. ROCHON: All right.

18 THE COURT: That's why we're here.

19 MR. ROCHON: Yes. We're focusing on the exhibits they
20 said they would do first today so we don't unduly delay the
21 jury. And so the one we just addressed is the first day, and
22 we appreciate the plaintiffs telling us which ones are first
23 day and second day with this witness.

24 THE COURT: Have you identified for them which videos
25 you have an objection to?

F1F3SOK1

1 MR. ROCHON: Yes.

2 MR. YALOWITZ: May I consult with Mr. Rochon for a
3 moment, your Honor?

4 THE COURT: Yes.

5 MR. YALOWITZ: They object to them all.

6 MR. ROCHON: We're not in agreement on the videos,
7 your Honor.

8 THE COURT: When are we going to get to the next
9 video?

10 MR. YALOWITZ: Let's see how the day goes.

11 THE COURT: Do you think it is today?

12 MR. YALOWITZ: No, it is not today.

13 THE COURT: All right. Possibly tomorrow? Or not
14 until next week?

15 MR. YALOWITZ: Anything that I think we are going to
16 get to today or tomorrow I have identified for the defendants.
17 And as far as I can tell, they've flagged what they're
18 concerned about to the Court.

19 THE COURT: I'm not sure they flagged what they're
20 concerned about to the Court.

21 MR. ROCHON: There is a couple of things.

22 THE COURT: You haven't told me what you objected to.

23 MR. ROCHON: No. We've exchanged something on the
24 redactions overnight. Because there is one conviction they
25 want to use today, and we sent them proposed redactions to it

F1F3SOK1

1 yesterday evening. We haven't talked to them about how those
2 will go. We should do that before they seek to use that with
3 the witness.

4 MR. YALOWITZ: I agree with that.

5 MR. ROCHON: There is an Exhibit 212 that Mr. Hill was
6 about to raise that we want to talk to them about. But I think
7 we'll need to talk to the Court.

8 THE COURT: Can you just hand me a copy of 212 so I
9 can look at it during examination so I can be prepared to
10 intelligently talk about it.

11 MR. YALOWITZ: And just, your Honor, I'm curious to
12 hear from Mr. Rochon and his team, his army, what parts of 212
13 they're concerned about, because we might be able to work that
14 out.

15 THE COURT: All right. When I get it, I assume the
16 two of you have already discussed it. So discuss it if you
17 haven't discussed it.

18 MR. YALOWITZ: We have not.

19 THE COURT: Don't raise it with me.

20 MR. ROCHON: If it turns out they're not going to use
21 it in the morning portion, we'll talk about it at lunch.

22 MR. YALOWITZ: I'll give the Court and Mr. Rochon my
23 assurance that even if I had been planning to use it in the
24 morning, I'll just do something else.

25 THE COURT: All right.

F1F3SOK1

MR. ROCHON: Thanks.

THE COURT: Let's get the jury. They're here, they're waiting for us. Let's bring them in and continue. Can we put the witness back in the box.

(Continued on next page)

F1F3SOK1

(Jury present)

THE COURT: Good morning, ladies and gentlemen. We're prepared to continue at this time.

Mr. Yalowitz, do you have any further examination of Mr. Kaufman?

MR. YALOWITZ: No, sir. I tender the witness. Thank you, your Honor.

THE COURT: Cross-examination.

NICHOLAS KAUFMAN,

CROSS-EXAMINATION

BY MR. SATIN:

Q. Mr. Kaufman, good morning.

A. Good morning, Mr. Satin.

Good morning, members of the jury.

Q. The cases you testified about yesterday were all criminal cases, correct?

A. Correct.

Q. In each case there was an individual who was on trial?

A. Correct.

Q. You and Mr. Yalowitz took turns reading from their court records?

A. That's in fact what happened yesterday, yes.

Q. And the individual whose case you were reading about was often referred to as "the defendant"?

A. Correct.

F1F3SOK1

Kaufman - cross

1 Q. Because in a criminal case, the person who is on trial is
2 called the defendant?

3 A. Correct.

4 Q. So, for example, in the case of Abdullah Barghouti, the
5 case record would call him "the defendant," correct?

6 A. Correct.

7 Q. For a different defendant, let's say Ibrahim Abdel Hai,
8 that person was also referred to as "the defendant"?

9 A. If it is his own case, yes.

10 Q. Just to be clear, none of those case records that you
11 reviewed and testified about yesterday was the Palestinian
12 Authority the defendant?

13 A. No.

14 Q. I'm sorry?

15 A. No.

16 Q. No?

17 A. No, no, no. Of course not. No.

18 Q. The same is true for the PLO?

19 A. That's correct.

20 Q. Neither the PLO nor the PA was the defendant in the cases
21 you reviewed and testified about yesterday?

22 A. Correct.

23 Q. Yesterday you also mentioned the name of some of the
24 victims of these crimes?

25 A. Correct.

F1F3SOK1

Kaufman - cross

1 Q. And some of the names you mentioned are not plaintiffs in
2 this case, correct?

3 A. That's correct.

4 Q. Let's talk about your background for a minute. You were a
5 prosecutor for a number of years?

6 A. Correct.

7 Q. Between 1996 and 2010?

8 A. Correct.

9 Q. And that was in an Israeli civilian court?

10 A. Correct.

11 Q. In Jerusalem?

12 A. Correct.

13 Q. And the case files you reviewed, with one exception, were
14 not from the Israeli civilian court, correct?

15 A. Correct, there was one, Nasser Aweis, and that was from the
16 civilian court.

17 Q. All the other ones were from the Israeli military court?

18 A. What I'm familiar with, one Barghouti case as well, but
19 that's also a civilian court.

20 But you are absolutely right. Only Nasser Aweis.

21 Q. We are talking about the cases you reviewed and testified
22 about in this case.

23 A. The cases about which I testified yesterday, only one, to
24 the best of my recollection, was in an Israeli civilian court.

25 Q. To be clear, there are two separate court systems, the

F1F3SOK1

Kaufman - cross

1 Israeli civilian court system and the Israeli military court
2 system?

3 A. You're right.

4 Q. You were a prosecutor in the Israeli civilian court system?

5 A. Correct.

6 Q. At the same time you were, if I understand correctly, still
7 are a judge in the Israeli military court system?

8 A. From 2002, yes, there was a period of overlap when I was a
9 prosecutor and a judge.

10 Q. Your work as a judge in the Israeli military court system,
11 that was not a full-time job, correct?

12 A. It was my compulsory reserve military duty.

13 Q. So you say compulsory reserve military duty, that means you
14 had to do it as part of your service for the Israeli military?

15 A. Correct.

16 Q. Something you volunteered to do -- well, the service is
17 required, but it was your choice to do it in the Israeli
18 military court system?

19 A. You're right, and I've given you the reasons why. Do you
20 wish me to explain why again?

21 Q. I'm just asking you the questions.

22 A. Yes, it was my choice to serve as a judge.

23 Q. In the Israeli military court system?

24 A. Correct.

25 Q. And the judges in the Israeli military court system are

F1F3SOK1

Kaufman - cross

members of the Israeli military?

A. Correct.

MR. YALOWITZ: Your Honor, can I have a side bar
please. I have an objection.

THE COURT: Come up.

(Continued on next page)

F1F3SOK1

Kaufman - cross

1 (At the sidebar)

2 MR. YALOWITZ: Okay, your Honor has ruled that putting
3 the Israeli military court system on trial is inappropriate.
4 That's not going to happen in this case. Mr. Satin just asked
5 a question, of which the only possible relevance can be to
6 challenge the validity of the military court proceedings. And
7 we're just not going down that road. I thought we were clear
8 about that.

9 MR. SATIN: The Court said we can elicit information
10 about how the system works. I'm not going to talk about its
11 fairness.

12 MR. YALOWITZ: I didn't open that door.

13 MR. SATIN: He brought out evidence about the
14 military --

15 THE COURT: Don't debate each other. Tell me what
16 you're going to do and where you're going.

17 MR. SATIN: I'm eliciting basic facts, and I'm
18 confident he will say "yes" about the military court system.
19 Who the judges are, who the prosecutors are, what the cases are
20 in front of them. That's it.

21 MR. YALOWITZ: The purpose of that, your Honor, is to
22 make it appear that the military courts treat defendants
23 unfairly. That's his purpose for bringing it out.

24 THE COURT: No, he can elicit information about how
25 the court system works. And nothing so far --

F1F3SOK1

Kaufman - cross

1 MR. YALOWITZ: Why is it relevant?

2 THE COURT: The jury wants to understand how these
3 people got convicted. I think that's legitimate.

4 MR. YALOWITZ: I think he's really treading up against
5 your ruling, and I think they're trying to slip in the exact
6 thing that we raised in limine and the Court said they can't
7 do.

8 THE COURT: Well, I don't think he's crossed that line
9 yet. I think he's asked basic questions about how the court
10 system works and what his role was in the court system. And
11 whether or not his experience is in one court or the other
12 court. I don't think anything that he's asked so far implies
13 that one system is somehow unfair and the other system is
14 somehow not unfair.

15 And so, the nature of the questions he's asked so far
16 have not crossed that line. If you have a specific objection
17 to a specific question that you think is eliciting that kind of
18 information, I'll hear it. But so far, I think these are
19 perfectly legitimate questions, and not much different than the
20 questions that you asked for this witness to explain to them
21 the way they got convicted and how the court works.

22 MR. YALOWITZ: Let me be very clear. I didn't have a
23 problem with any of his questions until the one I objected to.

24 THE COURT: And you objected to?

25 MR. YALOWITZ: The one I objected to was all the

F1F3SOK1

Kaufman - cross

1 judges was -- can I have the question back? I want to be very
2 specific.

3 (The record was read)

4 THE COURT: Is that untrue or is that prejudicial?

5 MR. YALOWITZ: It is prejudicial.

6 THE COURT: Is that criticism of the court system?

7 MR. YALOWITZ: Yes. What he's going to do --

8 THE COURT: Not "what he's going to do."

9 MR. YALOWITZ: It is never too early. We'll take it
10 question by question.

11 THE COURT: That's what I just said. I said the
12 questions so far are not objectionable. So if we get to an
13 objectionable question, then you can make that objection. But
14 your objection to that question is overruled.

15 MR. YALOWITZ: I understand.

16 (Continued on next page)

F1F3SOK1

Kaufman - cross

1 (In open court)

2 BY MR. SATIN:

3 Q. The prosecutors in the Israeli military court system are
4 also members of the Israeli military?

5 MR. YALOWITZ: Objection.

6 THE COURT: Overruled.

7 A. Yes.

8 Q. You testified first on Tuesday and you said that as a
9 prosecutor you prosecuted state security offenses, correct?

10 A. Correct.

11 Q. And state security offenses are not just violent crimes
12 committed against Israeli civilians, correct?

13 A. They can be -- could you clarify your question?

14 Q. Sure.

15 A. Give me an example.

16 Q. A state security offense is if there is a crime against
17 Israeli soldiers?

18 A. That would be correct.

19 Q. It is a state security crime if it is a -- destruction of
20 military property would be a state security offense as well,
21 correct?

22 A. I would say correct, yes.

23 Q. Even membership in a prohibited or an illegal organization
24 is a state security offense, correct?

25 A. Correct.

F1F3SOK1

Kaufman - cross

1 Q. Failure to prevent an offense is considered a state
2 security offense?

3 A. Not necessarily, no.

4 Q. But it can be?

5 A. Let me explain to you my thought process and why I took my
6 time to think about the last question. Because we do have a
7 certain category of offenses under Israeli criminal code which
8 are called offenses against the security of the state. The
9 first set of offenses that you put to me could potentially fall
10 within that category. The last offense which you put to me,
11 failure to prevent an offense, does not fall in that category,
12 no.

13 Q. One of the cases you reviewed was the case of the military
14 prosecutor versus Bashar Barghouti, correct?

15 A. Correct.

16 Q. That was related to the January 22, 2002, attack, correct?

17 A. Correct.

18 Q. In that case, Bashar Barghouti was charged and convicted
19 of, quote, failure to prevent an offense, correct?

20 A. Correct.

21 MR. SATIN: Justin, if would please put on the monitor
22 plaintiff's trial exhibit 390A.

23 Q. This is from the case of the military prosecutor versus
24 Bashar Barghouti, correct?

25 A. That's indeed correct.

F1F3SOK1

Kaufman - cross

1 MR. SATIN: Justin, if you could highlight where it
2 says details of the offense.

3 Q. And what's been highlighted here, Mr. Kaufman, is what
4 makes up the crime of failure to prevent an offense, correct?

5 A. This is under a military legislation. Okay.

6 Q. So I'm going to read it here, and you tell me if I've read
7 it correctly.

8 "The above-named defendant in the area on January 20,
9 2002, or thereabouts, while knowing or having reasonable
10 grounds to suspect that another person was committing or
11 planning to commit a violation of law or security legislation
12 whose sentence exceeds three years imprisonment, did not
13 provide notice of this immediately to a military commander or
14 the nearest police station or any IDF officer or did not act in
15 another reasonable manner to prevent the commission,
16 continuation, or completion thereof as follows."

17 That's what it says, correct?

18 A. Correct.

19 Q. Just so we're clear, where it says "IDF," that refers to
20 Israeli Defense Forces?

21 A. Correct.

22 Q. That's the name of the Israeli military?

23 A. Correct.

24 Q. Do you consider that a state security offense?

25 A. Generically speaking, yes. But let me clarify. All

F1F3SOK1

Kaufman - cross

1 offenses in an Israeli military court by their very nature are
2 against the IDF or its security interests of the State of
3 Israel. However, when you asked me about the specific offense
4 of failing to prevent a criminal offense, that's also based in
5 Israeli civilian legislation, and it is not necessarily an
6 offense against the security of the state.

7 Q. Between 2000 and 2004, there were thousands of Palestinians
8 charged with state security offenses, correct?

9 MR. YALOWITZ: Objection.

10 A. I don't know.

11 THE COURT: Overruled. Do you know?

12 THE WITNESS: I don't.

13 Q. Let's talk for a minute about your role in this case. You
14 weren't the judge in any of the cases that you testified about,
15 correct?

16 A. Correct.

17 Q. You weren't the prosecutor?

18 A. Correct, I was not the prosecutor in any of these cases.

19 Q. Your only role with respect to these cases is you reviewed
20 them and gave testimony about them, correct?

21 A. Correct.

22 Q. None of the files that you reviewed relate to an attack on
23 June 19, 2002, correct?

24 A. Correct.

25 Q. Of the case files you received, only one case related to

F1F3SOK1

Kaufman - cross

1 the attack on January 27, 2002, correct?

2 A. Munzar Noor.

3 Q. That was the only one?

4 A. Correct.

5 Q. Yesterday there was an image from the March 21, 2002,
6 attack.

7 Justin, if you can please put that on the screen.

8 Do you remember this image from yesterday?

9 A. Yes.

10 Q. You see the individual on the left whose name is Toufik
11 Tirawi, correct?

12 A. Correct.

13 Q. I'm not going to wack the screen with a stick, but you know
14 who I'm talking about?

15 A. Yes.

16 Q. That individual was never charged in connection with the
17 March 21, 2002, attack, correct?

18 A. I don't know.

19 Q. You certainly didn't receive a file for Toufik Tirawi,
20 correct?

21 A. I did not receive a file for Toufik Tirawi.

22 Q. Thank you. I just want to ask you some questions about the
23 July 31, 2002, attack. This is the one at Hebrew University,
24 correct?

25 A. Correct.

F1F3SOK1

Kaufman - cross

1 Q. Abdullah Barghouti was convicted in connection with that
2 crime, correct?

3 A. Correct.

4 Q. That date was July 31, 2002?

5 A. 21.

6 Q. I'm sorry?

7 A. Let me check.

8 Q. Sure. Please do.

9 A. July 31, yes.

10 Q. In fact, in the indictment it says the date of that
11 offense?

12 A. Correct.

13 Q. I'm sorry?

14 A. Correct.

15 Q. It lists the details of the offense; in other words, what
16 happened?

17 A. Correct.

18 Q. Abdullah Barghouti was also convicted of being a member of
19 Hamas, correct?

20 A. Let me refresh my memory.

21 Q. I'll direct your attention to Count Two if that's helpful
22 to you.

23 A. You're right, Mr. Satin. He was convicted of membership in
24 the proscribed organization. Az-Adin Alqassam, that's the
25 Hamas.

F1F3SOK1

Kaufman - cross

1 Q. In that same binder that was given, it discusses an
2 individual named Ahmed Barghouti, correct?

3 A. Correct.

4 Q. Ahmed Barghouti was convicted of a number of crimes, right?

5 A. Correct.

6 Q. His indictment has 53 counts in it all together, correct?

7 A. Let me refresh my memory.

8 Q. Please.

9 A. Correct, Mr. Satin.

10 Q. Not one of those 53 convictions was for the July 31, 2002,
11 Hebrew University attack, correct?

12 A. Not specifically, no.

13 Q. Well, nowhere in the 53-count indictment is the Hebrew
14 University attack on July 31, 2002, even mentioned, correct?

15 A. To the best of my knowledge, no.

16 Q. In fact, at the time of the attack, you said the date was
17 July 31, 2002. We're in agreement about that.

18 A. Correct.

19 Q. At that time on July 31, 2002, Ahmed Barghouti was already
20 in jail, correct?

21 A. I can't tell you offhand.

22 Q. If you would look at plaintiff's trial exhibit 357.

23 Justin, if you would please put that on the screen.

24 This is from the amended indictment of the military
25 prosecutor versus Ahmed Barghouti, correct?

F1F3SOK1

Kaufman - cross

1 A. Correct.

2 Q. It says on the bottom -- I'm no longer on the bottom. It
3 says there that he's been detained since April 15, 2002.

4 A. Correct. That would be before July the 31st.

5 Q. Detained means he's in jail, right?

6 A. It means he is on remand until the end of his criminal
7 proceedings.

8 Q. When you say he's on remand, he's locked up. He's not free
9 to go?

10 A. He's not free to go, no.

11 Q. Ahmed Barghouti was convicted of giving shelter to Abdullah
12 Barghouti, correct?

13 A. Correct.

14 Q. I'll direct your attention to count 51 on page 73, if
15 that's helpful. Also on the screen, if that's more helpful.

16 A. Yes.

17 Q. Again, like in the other indictments, it gives the date of
18 this offense, correct?

19 A. Correct.

20 Q. That date is in late 2001 or thereabouts, correct?

21 A. Correct.

22 Q. If you would turn the page, Justin, if you would go to the
23 second page as well, the shelter, the lodging that Ahmed
24 Barghouti gave to Abdullah lasted for, quote, several days,
25 correct?

F1F3SOK1

Kaufman - cross

1 A. Several days, yes. It says that on the end of the second
2 paragraph.

3 Q. So you'd agree that in late 2001 or thereabouts, Ahmed
4 Barghouti gave shelter to Abdullah Barghouti for several days?

5 A. I agree that that's what the indictment says, yes, and
6 that's what he pleaded guilty to.

7 Q. And in late 2001 or thereabouts was at least seven months
8 before the Hebrew University attack on July 31, 2002, correct?

9 A. Can you repeat the question, please.

10 Q. Well, let me break it down. So this may be the easiest
11 question ever asked.

12 December 31 is the last day in 2001, correct?

13 A. Correct.

14 Q. So December 31 is seven months before July 31, 2002?

15 A. Correct.

16 MR. SATIN: Nothing further.

17 THE COURT: Any further questions, Mr. Yalowitz?

18 MR. YALOWITZ: No, your Honor.

19 THE COURT: Thank you, sir. You can step down.

20 (Witness excused)

21 THE COURT: Mr. Yalowitz, call the next witness.

22 MR. YALOWITZ: Plaintiffs call Alon Eviatar.

23 (Witness sworn)

24 THE COURT: Could you state and spell your name for
25 the court reporter.

F1F3SOK1

Kaufman - cross

1 THE WITNESS: My name is Alon Eviatar. The spelling
2 in English is A-L-O-N E-V-I-A-T-A-R.

3 THE COURT: You can inquire.

4 MR. YALOWITZ: Thank you, your Honor.

5 ALON EVIATAR,

6 called as a witness by the Plaintiffs,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. YALOWITZ:

10 Q. Mr. Eviatar, thank you for coming in. Would you tell the
11 jury where you grew up.

12 A. I grew up in the State of Israel.

13 Q. Would you tell the jury just a little bit about what it was
14 like growing up in the State of Israel.

15 MR. ROCHON: Objection, your Honor.

16 THE COURT: Sustained to the form of the question.

17 Q. Could you describe a little bit of your background before
18 you went to university, please.

19 A. I was drafted into the Israel Defense Forces at age 18. I
20 served consecutively for 27 years. And during the course of
21 that period of time, I studied for two academic degrees at
22 university.

23 Q. Before you went in the army, what did you do?

24 A. I grew up as a boy in one of Israel's cities. I was active
25 for many years in a youth movement, I served as a counselor in

F1F3SOK1

Eviatar - direct

1 the youth movement.

2 Should I speak about my hobbies as well?

3 Q. With the Court's indulgence.

4 THE COURT: A little indulgence.

5 A. I really love to travel and hike, and I love to read. And
6 I guess that will be enough for now.

7 Q. Mr. Eviatar, do you speak the Arabic language?

8 A. Yes, I speak the Arabic language. I studied it during all
9 of my studies at school, including for my matriculation exams,
10 and I was tested in Arabic as well.

11 Q. How would you describe your level of fluency with reading
12 and speaking the Arabic language?

13 A. I would define it as a very good level of Arabic.

14 Q. Mr. Eviatar, could you just try to adjust your microphone
15 so that the jury can hear your voice a little bit.

16 THE COURT: Just pull it down towards you.

17 Q. Now, what about the English language?

18 A. I read English, I understand English at a level that I
19 would describe as medium to good. And I speak a reasonable
20 level of English.

21 I should just note that I've been in New York now for
22 10 days, and my English has gotten better over the past 10
23 days.

24 Q. Okay. Mr. Eviatar, could you take us back to your army
25 career. You said you were drafted in at the age of 18. Where

F1F3SOK1

Eviatar - direct

1 were you assigned at the beginning of your military career?

2 A. I was drafted on a volunteer basis to the largest
3 intelligence unit in the Israel Defense Forces. It belongs to
4 the intelligence branch. And I served there as an intelligence
5 officer, I would say in several different intelligence arenas.
6 And that was for a period of 12 years.

7 Q. During that time, did you pursue academic studies as well?

8 A. Yes. I studied on behalf of the IDF. I was sent by the
9 military to university, and I did my bachelor's degree there in
10 middle eastern studies and political science.

11 Q. Did you pursue studies after your bachelor's degree?

12 A. Yes. I continued to study for my master's degree in 2009,
13 and I completed my master's degree at the university in
14 accordance with the academic requirements.

15 Q. What did you focus on for your master's degree?

16 A. I studied political science and public policy.

17 Q. Now, you mentioned you were in that intelligence unit for
18 12 years. What areas or what arenas did you focus on?

19 A. The two primary arenas that I dealt with were the Egyptian
20 area, the Syrian area, and during the course of that period of
21 time, I also served in a guidance capacity for other
22 military -- for other intelligence officers.

23 Q. About what year does that take us to, the years between
24 ages 18 and 30?

25 A. I didn't really understand the question.

F1F3SOK1

Eviatar - direct

1 Q. Oh. What year did you finish your work in that
2 intelligence unit and move on to another area?

3 A. Approximately age 30.

4 Q. What year was that in chronological time?

5 A. It was in 1998. Then, I moved to a different unit. I'd
6 only like to note I remember this very well, because that's
7 also the year when I got married.

8 Q. What was the new unit that you moved to in 1998?

9 A. The unit is called the COGAT unit. Coordination of
10 Government Activities in the Territories.

11 Q. What does the COGAT unit do?

12 A. This unit is charged on behalf of the government of Israel
13 and the Israel Defense Forces with the entire system of
14 coordination and liaising with the Palestinian Authority, with
15 international organizations, and all of the other official
16 organizations that operate in the areas of the Palestinian
17 Authority.

18 Q. How long were you in the COGAT unit?

19 A. I served in the COGAT unit for approximately 15 years
20 straight.

21 Q. Let me just make sure that we understand. Coordination of
22 Government Activities in the Territories. For somebody who is
23 unfamiliar with the territories, is that Gaza and the West
24 Bank?

25 A. Precisely.

F1F3SOK1

Eviatar - direct

1 Q. So, did your work actually bring you to travel throughout
2 Gaza and the West Bank during your period of service?

3 A. During the course of 10 years straight, I served in those
4 territories. I traveled throughout the West Bank on a daily
5 basis. And when I served in the Gaza Strip, I traveled there
6 as well.

7 Q. By the end of your tenure within the Coordination Unit,
8 what was your military rank?

9 A. I completed my service in the military with the rank of
10 lieutenant colonel.

11 Q. At the end of your period of service, what was your
12 particular job?

13 A. For a period of several years, I served as the head of the
14 consultation unit for Palestinian affairs in the headquarters
15 of COGAT, Office for the Coordination of Government Activities
16 in the Territories. And I served as a personal advisor for the
17 head of the -- head of COGAT for Palestinian affairs.

18 Q. In focusing on Palestinian affairs, what kinds of things
19 did you watch and evaluate?

20 A. In fact, all the affairs that could be included in
21 intelligence affairs in the Palestinian arena were available to
22 me. I regularly investigated and exposed all the relevant
23 materials from the Palestinian media, from the Palestinian
24 media, from all the various types of media. I held -- I
25 maintained very close ties with hundreds of Palestinians

F1F3SOK1

Eviatar - direct

1 throughout all those years. I met personally, I would say,
2 with thousands of Palestinians from all the various sectors,
3 from all the various parts of society, official and unofficial,
4 in all possible roles and functions, from the various
5 movements. I also maintained professional ties with research
6 institutes, academic institutes which have ties and interests
7 in the Palestinian arena.

8 Q. Did you study the power structure of the Palestinian
9 Authority, the PLO, and Fatah?

10 A. Of course. That is the basis, the first and foremost of my
11 professional activities.

12 Q. And did you study what might be called the Palestinian
13 street?

14 A. Not only did I investigate it, that is the particular
15 specialty of my unit.

16 Q. What kinds of things did you do to investigate that area?

17 A. Daily, for many years, I and my people, we followed very
18 closely and read, we watched, we observed, the Arab, Arabic and
19 Palestinian media, both on the level of the ongoing current
20 events, and also observed ongoing longer term trends.

21 We, and I as the head of the department, held regular,
22 personal meetings with Palestinian officials and individuals,
23 and held discussions and meetings with those Palestinian
24 officials and people and also, held daily phone calls.

25 I also personally focused on actually traveling the

F1F3SOK1

Eviatar - direct

1 field. I maintain that there is nothing better than seeing
2 things for yourself. I would enter Palestinian villages in a
3 military jeep, and I was also privileged to receive invitations
4 from my Palestinian colleagues in the Palestinian cities.

5 Q. You mentioned that you were running a department. How many
6 individuals did you supervise?

7 A. About 50 officers and investigators.

8 Q. Did you have occasion, as head of the department, to give
9 the reports, briefings, or advice to others?

10 A. That was my daily work. All the knowledge that I
11 accumulated, the understandings, the conclusions, and
12 recommendations, I presented in writing in the context of
13 reports of every different kind. A report can be one page, and
14 it can be a 300-page book. And all these were disseminated to
15 all the various intelligence units and levels in Israel.

16 Q. Let me just ask you a little bit about those written
17 reports. Before you signed off on a written report, did you
18 review it?

19 A. First of all, some of those reports I myself wrote. And
20 every other report that crossed my desk was not disseminated
21 without my authorization.

22 Q. When you signed off on a report that somebody else had
23 drafted, did you take personal responsibility to ensure its
24 accuracy?

25 A. Definitely. One of my professional roles was to monitor

F1F3SOK1

Eviatar - direct

1 and control the professional work of those working under me.

2 (Continued on next page)

FlfQsok2

Eviatar - Direct

1 Q. Now, I think you may have mentioned, but let me just make
2 sure I've got it. Did you give oral briefings to military and
3 civilian officials?

4 A. Of course. That's part of my regular job. I debriefed
5 officers serving under me and my superiors, including oral
6 reports and surveys that I delivered to the chief of staff
7 himself.

8 Q. And civilian officials as well?

9 A. Civilians who held official positions in government
10 ministries, such as the prime minister's office. I can recall
11 a meeting that I participated in in the presence of the prime
12 minister, the ministry of foreign affairs, the ministry of
13 defense, the ministry of strategic affairs, the ministry of the
14 treasury, and others.

15 Q. Now, did there come a time when you created a special
16 department dealing with intelligence --

17 MR. ROCHON: Objection, leading.

18 THE COURT: I will allow it.

19 MR. YALOWITZ: Thank you. It's customary to allow the
20 question to be finished before the objection is lodged.

21 THE COURT: If you want to ask the question, you'd
22 better stop arguing.

23 MR. YALOWITZ: Thank you, your Honor.

24 THE COURT: Ask the question.

25 Q. Did there come a time when you were involved in the

FlfQsok2

Eviatar - Direct

1 creation of an intelligence department about a particular
2 organization?

3 A. Yes, definitely.

4 Q. Would you tell us about that?

5 A. After the abduction of the soldier Gilad Shalit, I remember
6 clearly this incident in 2007. It could have been late 2006.
7 I established a special department, this was for the first
8 time, which dealt with the collection of information from the
9 civilian apparatus of Hamas in the West Bank. We're talking
10 about hundreds of institutions that belonged to Hamas. From
11 there we collected on an ongoing basis.

12 MR. ROCHON: Excuse me. Objection. Your Honor, may
13 we approach the bench?

14 THE COURT: Come up.

15 (Continued on next page)

FlfQsok2

Eviatar - Direct

1 (At the sidebar)

2 MR. ROCHON: This is improper testimony. The reason
3 it's improper is because it's 2006 and 2007 about the Hamas.
4 As the Court knows, about 2006 and 2007, Hamas not only split
5 from my client's government, it had actually overthrown it and
6 pushed them out of the Gaza Strip and were killing members of
7 the non-Hamas part of the government in Gaza and where they
8 could in the West Bank. So this testimony about all this work
9 related to Gilad Shalit; that he was a soldier who was
10 kidnapped by Hamas and of course when they dialed up their work
11 on Hamas because Hamas had done this terrible thing, my client
12 here is not alleged to be involved in that. This is at a time
13 when there was open oppositional relationship between my client
14 and Hamas, and we're extremely prejudiced by any effort to
15 connect the client to Hamas especially at a phase after the
16 events at issue.

17 THE COURT: Where are you going with this,
18 Mr. Yalowitz?

19 MR. YALOWITZ: This is background just telling the
20 jury that he started a unit that studied Hamas. He knew enough
21 about Hamas that they put him in charge of a unit to study
22 Hamas.

23 THE COURT: What is the relevance of the details that
24 he is going into now?

25 MR. YALOWITZ: I don't care about the details. I just

FlfQsok2

Eviatar - Direct

1 wanted them to know that he was in charge of a unit that
2 studied Hamas.

3 THE COURT: What else do you intend to ask?

4 MR. YALOWITZ: What is Hamas?

5 THE COURT: OK.

6 MR. ROCHON: Your Honor, as long as we're here, the
7 comments on the rulings -- I make an objection and whether or
8 gets sustained or not, I don't need to have it embellished by
9 counsel.

10 THE COURT: That rule needs to apply to both sides.
11 Both sides have violated that rule. When I rule, it is over.
12 If you want to make a record outside the presence of the jury,
13 I don't want any other comments or arguments or comments on
14 other people's examinations or comments with regard to the
15 ruling.

16 MR. YALOWITZ: Understood.

17 THE COURT: I will make my rulings, and you will move
18 along.

19 MR. YALOWITZ: May we have an instruction that the
20 question may be completed before the Court rules -- before the
21 objection is made because to make an objection in the middle of
22 a question is disruptive and improper because they don't even
23 know what the question is.

24 MR. ROCHON: If it was a leading question, you've got
25 to try to stop it.

FlfQsok2

Eviatar - Direct

1 THE COURT: No, I'm not going to do that. The rule
2 technically is it's an objection to the question; not an
3 objection to the answer. So the objection comes after the
4 question; it doesn't come after the answer.

5 MR. YALOWITZ: That's what I'm asking. My question
6 wasn't finished, your Honor.

7 THE COURT: He was talking when we came up here; not
8 you.

9 MR. YALOWITZ: It's the last one. It's where I
10 started to ask a question, Mr. Rochon interrupted me, and then
11 the Court overruled the objection, but by then I had already
12 asked another question, so, in essence, by interrupting, he
13 gets sort of a free sustained.

14 THE COURT: I think you are smart enough and
15 experienced enough that you can handle that.

16 MR. YALOWITZ: I don't think you were reading me right
17 on that one, your Honor.

18 (Continued on next page)
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FlfQsok2

Eviatar - Direct

(In open court)

Q. Just to pick up where we were Mr. Eviatar, what was the subject or target of the unit that you were put in charge of?

A. The target or aim was clear by means of these materials we identified broadly, solidly and on an ongoing basis a very close connection between the civilian apparatuses of Hamas and the terror apparatus of Hamas. May I give an example?

Q. No. We will get there. Just bear with us. I just want to get some background first. Thank you.

Did you pursue studies within the army by doing special course work inside of the IDF?

A. Could you repeat the question?

Q. Sure.

A. I'm not sure I understood.

Q. Did you pursue any studies within the IDF?

A. Yes, of course. The mandate that was given to me as head of this unit was to be, as I would put it, the head investigator of this unit.

Q. Could you tell the jury about the command and staff course that you took?

A. For about one year I was the first candidate of my unit. I participated in a course, and the course belongs to an entity that is called Staff and Command College of the IDF. This is a course which involves the participation of a couple dozen officers from all the IDF units who are continuing on a

FlfQsok2

Eviatar - Direct

1 long-term army career. This course has a parallel course in
2 the American military.

3 The second course that I participated in, I was also
4 the first of my unit to participate in it. It is called the
5 interbranch Course. It's a course involves the participation
6 of about 20 people from all the military and other intelligence
7 agencies in Israel.

8 Q. How long did you attend the Command and Staff course?

9 A. One entire year.

10 Q. How long did you attend the interagency intelligence
11 course?

12 A. Between three and four months.

13 Q. Now, during your period of service, were you a member of
14 any professional forums?

15 A. Yes, definitely. Would you like me to go into it?

16 Q. Please.

17 A. I was a member of a number of professional teams as a
18 representative of COGAT, the Coordinator of Government Affairs
19 in the interrogations. The coordinator, the head of COGAT is a
20 brigadier general.

21 The first team that I was a member of was an
22 interministerial team, the aim of which is to prevent funds,
23 terror funds from flowing. The idea is to create an
24 interagency understanding how to stop funds that come from
25 various different sources that reach the terror organizations.

FlfQsok2

Eviatar - Direct

1 The second team of which I was a member was also an
2 interagency team. It was part of the ministry of strategic
3 affairs in Israel and its role was to collect and consolidate
4 all the materials related to incitement in the Palistinian
5 Authority.

6 Q. What do you mean by incitement?

7 MR. ROCHON: Your Honor, I'm going to object. He is
8 starting to get into the opinion part. So I would ask if --

9 MR. YALOWITZ: I think we should be approaching, your
10 Honor, if we are going to have substantive discussions about
11 the objection.

12 THE COURT: Are you going to move to qualify him as an
13 expert?

14 MR. YALOWITZ: Not right this minute.

15 THE COURT: Give me your question again. You want to
16 know from him what?

17 MR. YALOWITZ: He described one of his background
18 items as incitement, and I wanted the jury to understand what
19 he meant when he said incitement.

20 THE COURT: I'll overrule the objection.

21 MR. YALOWITZ: Thank you.

22 Q. Please, Mr. Eviatar, what did you mean by incitement?

23 A. The various media, the educational system from the level of
24 nursery school up until the university level to what was said
25 at the mosques, what's said at press conferences, at political

FlfQsok2

Eviatar - Direct

1 conferences, etc., etc., different media stages, all of this
2 has a great deal of importance with respect to everything that
3 pertains to what the leadership, the Palistinian leadership,
4 all of the different sectors of the Palistinian leadership,
5 what they want to convey to the public by messages, by
6 statements, by hinting, by explicit calls, all of these fall
7 under the category of incitement, the meaning of which is clear
8 anti-Israeli statements from an explicit call for armed
9 struggle, and to the other end of it completely ignoring the
10 existence of the state of Israel, for example.

11 Q. Let me ask you this: Were there other interministerial
12 teams that you participated in?

13 A. Yes, there were three additional teams.

14 Q. Please describe them.

15 A. An additional team was an interagency team in which I
16 participated as a consultant for the head of the Israeli prison
17 services. That's the person who is charged with all of the
18 Palistinian prisoners who are incarcerated in Israel, and, of
19 course, other prisoners as well.

20 The second team in which I participated, I served as a
21 personal adviser to the general in charge of the central
22 military command. He is an officer with the rank of major
23 general who is the commander of all of the territories that we
24 mentioned previously.

25 The third team in which I was a member, I was a

FlfQsok2

Eviatar - Direct

1 personal adviser to the head of the Judea and Samaria Division
2 unit which is, in effect, the West Bank with respect to all of
3 the different Palistinian affairs.

4 Q. Thank you so much. When did you retire from active duty?

5 A. In April 2013.

6 Q. Do you still serve as a reserve officer?

7 A. Yes, I serve in the reserves.

8 Q. What have you been doing now that you've entered civilian
9 life?

10 A. First of all, I discovered that a person can have a second
11 career. Since I was discharged from the idea, I work as an
12 expert on Palistinian affairs. I serve as an adviser and as an
13 expert witness, and I work with several different law firms.

14 An additional kind of work that I do, I lecture at
15 various forums about the Arab-Israeli conflict. Some of those
16 lectures, I do on a volunteer basis.

17 And the third kind of work that I do that I don't
18 receive any compensation for, I serve as a commentator on
19 Palistinian affairs for a variety of different media channels
20 in Israel.

21 Q. Do you consult with any non-governmental organizations at
22 the present time?

23 A. Yes. Thank you for reminding me about that. I also serve
24 as an adviser without pay for an entity that is a
25 non-governmental organization. It's called the council for

FlfQsok2

Eviatar - Direct

1 peace and security. It's an entity that includes more than 500
2 former officers. I would call them former senior members of
3 the Israeli defense establishment, and I'm their adviser for
4 Palistinian affairs.

5 MR. YALOWITZ: Your Honor, would it be a good
6 convenient time to break? If not, I would just like to consult
7 with the Court.

8 THE COURT: All right. Why don't we take a break.
9 Take a ten minute break. Don't discuss the case. Keep an open
10 mind, ladies and gentlemen.

11 (Jury excused)

12 (Continued on next page)

FlfQsok2

Eviatar - Direct

(Jury not present)

THE COURT: Mr. Yalowitz.

MR. YALOWITZ: Your Honor, yesterday we proceeded with Mr. Kaufman without a motion to qualify him as an expert.

Apparently, Mr. Rochon is objecting to the qualifications of Mr. Eviatar as an expert on the Palistinian arena, and we have laid out in letters to the Court, and I think by now you've seen his expert report on the topics he's going to cover. And so I defer to the Court. Some judges want a formal oral motion or application. Sometimes we just go through with it. We defer to you on it, your Honor.

THE COURT: Again, I have no preference. It's usually the parties' preference. The last witness you didn't necessarily have to, as long as the record obviously indicates he's qualified to testify about what he testified to and there is no insistence or challenge to those qualifications.

If they are challenging specifically his qualifications as an expert in the areas in which you want him to testify, then as soon as you feel comfortable that you've laid enough of a basis for me to make such a finding and you want me to make such a finding before this jury, I will.

MR. YALOWITZ: All right. Let's see what defendants want. I'm happy to lay a little more foundation on his methodologies and the areas he's going to cover, and then we can make that motion in front of the jury if the Court wishes.

FlfQsok2

Eviatar - Direct

1 MR. HILL: My only concern is this: This witness'
2 report has 11 different topics, one of which has been
3 withdrawn. If the plaintiffs are offering him as an expert in
4 each of those different topics at this point, I don't think
5 there is a foundation for that.

6 THE COURT: Well, I assume not. If he is not going to
7 testify as to each of the topics, he's going --

8 MR. HILL: I understand there's ten left. If
9 Mr. Yalowitz will proffer which of the topics he will testify
10 about, it may help us focus on the issues of qualification.

11 THE COURT: We can save ourself some time.
12 Mr. Yalowitz, what is going to be the nature of the subject
13 matter of his testimony?

14 MR. YALOWITZ: We have gone over this before. I don't
15 think this will come as any surprise to the defense. He is
16 going to provide basic information about the PLO, the PA,
17 Fatah, and the relationships among them.

18 THE COURT: I have that checked off on the top of my
19 list.

20 MR. YALOWITZ: Right. He's going to describe two
21 important terror organizations that operated during the '02 to
22 '04 period, the Al Aqsa Martyrs' Brigades in Hamas. He's going
23 to talk about the relationship between the PA, PLO, Fatah and
24 the Al Aqsa Martyrs' Brigades.

25 THE COURT: I'm sorry, the relationship between --

FlfQsok2

Eviatar - Direct

1 first you said relationship between PA, PLO and Fatah.

2 MR. YALOWITZ: And how does the Al Aqsa Martyrs'
3 Brigades fit into that? He is going to talk about the
4 relationship between the defendants and Hamas.

5 THE COURT: Right.

6 MR. YALOWITZ: He's going to talk about the role of
7 the defendants in providing material support for the Hebrew
8 University bombing.

9 THE COURT: And what is the nature of that testimony
10 is going to be? Based on what?

11 MR. YALOWITZ: Based on the convictions that he's
12 reviewed, based on the documents that the defendants themselves
13 have produced, based on the public statements --

14 THE COURT: Are you talking about financial support?
15 More than financial support?

16 MR. YALOWITZ: Financial support, personnel we've
17 talked about before, weapons, money -- well, money, no.
18 Freedom to operate. There is a little bit of money, but I
19 don't know if I can get it in based on your Honor's rulings. I
20 might try, we'll see how you rule, but --

21 THE COURT: It depends what you're trying to get him
22 to say. If you're trying to get him to make an opinion based
23 on evidence that it's inadmissible at this trial, and that's
24 the primary or sole basis for his opinion, I'm not going to
25 allow it.

FlfQsok2

Eviatar - Direct

1 MR. YALOWITZ: I don't think we have anything on money
2 other than the -- other than the admission by Abdullah
3 Barghouti, "I got \$500 from Marwan Barghouti." So if the
4 Court's ruling, as I understand that this is the Court's ruling
5 that that statement is inadmissible, I'm not going to offer him
6 to just be a conduit for that statement.

7 THE COURT: I notice as I've been going through now
8 the context of the report, a number of his statements, factual
9 statements and opinions are based on the Abdullah Barghouti
10 confession.

11 MR. YALOWITZ: Correct.

12 THE COURT: To the extent that they're based on the
13 Barghouti confession, and to the extent that I've ruled that
14 the parts of those confessions that accuse or inculcate the PA
15 or the PLO solely by those statements, that's not going to be
16 an appropriate basis for him to opine. So I don't anticipate,
17 unless you can explain to me, that he has any specific opinion
18 to give with regard to Abdullah Barghouti and his role,
19 participation, and relationship with the PA or the PLO --

20 MR. YALOWITZ: He does.

21 THE COURT: -- solely based on what I have already
22 ruled is the inadmissible out-of-court statements about the PA
23 and PLO and Abdullah Barghouti.

24 MR. YALOWITZ: As I said, your Honor, with regard to
25 the payment of money, his only basis and my only basis is what

FlfQsok2

Eviatar - Direct

1 you've ruled inadmissible. I disagree with the ruling, but I
2 accept it. We're going to move on.

3 THE COURT: So I assume he is not going to testify
4 specifically about payments of money to Abdullah Barghouti.

5 MR. YALOWITZ: That's correct. That's the Court's
6 ruling, and we're going to follow it.

7 THE COURT: Right.

8 MR. YALOWITZ: Now, with regard to other things, for
9 example, whether he was released from prison, that's in a
10 different category.

11 THE COURT: Why is that in a different category?

12 MR. YALOWITZ: Well, first of all, we have testimony
13 from Mosaab Yousef that there was a plan to release him.

14 THE COURT: Where do we have such testimony?

15 MR. YALOWITZ: It's a video deposition of Mosaab
16 Yousef who saw the conversation when Abdullah Barghouti was
17 released. So Abdullah Barghouti is arrested. Marwan Barghouti
18 and Jabril Rajoub come back out, and they say "we have a deal,"
19 and the Court has ruled that testimony to be admissible.

20 THE COURT: From my review of his report, that is not
21 what he is either relying upon or even aware of.

22 MR. YALOWITZ: He relied on and cited that testimony
23 in his report, your Honor.

24 THE COURT: Well, you'd have to point me to that
25 because the footnote that I saw said that he was relying on

FlfQsok2

Eviatar - Direct

1 Abdullah Barghouti's confession.

2 MR. YALOWITZ: Well, I'll have to get you the cite,
3 but I have a specific memory, your Honor. I will get you the
4 cite, but I have a specific memory that we have that deposition
5 testimony cited in Mr. Eviatar's report at least twice. But
6 may I continue?

7 THE COURT: Just tell me quickly, because I don't want
8 to have to fight about this later, about the Abdullah Barghouti
9 statement. So what evidence are you going to present to this
10 jury to indicate that Abdullah Barghouti was released?

11 MR. YALOWITZ: We have a number of pieces of
12 circumstantial evidence. Number one, we have that plan.

13 THE COURT: OK.

14 MR. YALOWITZ: Number two, we have --

15 THE COURT: And the plan is?

16 MR. YALOWITZ: The plan is we are going to arrest him,
17 keep him for a few weeks, and release him.

18 THE COURT: And that's coming in through whom? Who is
19 going to say that?

20 MR. YALOWITZ: Yousef.

21 THE COURT: That's in the deposition of Yousef?

22 MR. YALOWITZ: Correct.

23 THE COURT: I'm just trying to recollect.

24 MR. YALOWITZ: Correct.

25 THE COURT: The deposition of Yousef, which I think we

FlfQsok2

Eviatar - Direct

1 did discuss and which at this point is admissible.

2 MR. YALOWITZ: Correct.

3 THE COURT: OK.

4 MR. YALOWITZ: Number two, we have the cross-checking
5 of custodial statements both by Ahmed Barghouti and Abdullah
6 Barghouti, both of whom Ahmed Barghouti said, "He was released
7 and I took him to the safe house." And Ahmed Barghouti is a PA
8 employee at the time he gives that statement.

9 THE COURT: Is that in this case at this point?

10 MR. YALOWITZ: We haven't offered it yet.

11 THE COURT: In what form are you going to offer it?

12 MR. YALOWITZ: It's a confession, a custodial
13 statement.

14 THE COURT: Of?

15 MR. YALOWITZ: Of Ahmed Barghouti at the time when he
16 was an employee of the defendant, and he's saying, "They
17 released him and I took him to the safe house." That's his
18 east statement.

19 THE COURT: OK.

20 MR. YALOWITZ: "Marwan and I took him to the safe
21 house."

22 THE COURT: OK.

23 MR. YALOWITZ: Then we have his own statement --

24 THE COURT: Whose own statement?

25 MR. YALOWITZ: I'm sorry, Abdullah Barghouti's

FlfQsok2

Eviatar - Direct

1 statement saying, "They released me and then Marwan and Ahmed
2 took me to the safe house."

3 THE COURT: But we have discussed that as being
4 inadmissible.

5 MR. YALOWITZ: I understand it's inadmissible, but an
6 expert who is relying on some admissible evidence and then
7 cross-checks with things that are professionally appropriate
8 for him to rely on --

9 THE COURT: But it doesn't give him the right to put
10 that inadmissible evidence before the jury.

11 MR. YALOWITZ: I agree with that. Although some
12 judges allow it to be read out by counsel.

13 THE COURT: What do you mean read out?

14 MR. YALOWITZ: Like under 705, you can say, you know,
15 "you're relying on this piece of evidence, I'm going to read
16 it."

17 THE COURT: That's still putting it before the jury.

18 MR. YALOWITZ: As I said, there's a judicial
19 preference. I don't think there is any rule that requires --

20 THE COURT: I think there is a rule. The rule is if
21 the evidence is inadmissible, it's inadmissible. It doesn't
22 come in. That's the rule. It doesn't come in through the
23 lawyer, it doesn't come in through a witness, it doesn't come
24 in through a piece of paper.

25 MR. YALOWITZ: I understand that's the Court's rule.

FlfQsok2

Eviatar - Direct

1 I'm not arguing with it.

2 THE COURT: So I do not expect that this witness will
3 make any statement about any fact that he got from Abdullah
4 Barghouti's interrogation. He is not going to comment on
5 either the interrogation or the substance of what was said in
6 that interrogation.

7 MR. YALOWITZ: Let me just make sure. You know I
8 can't talk to the witness now.

9 THE COURT: Yes, you can. You can tell him that's my
10 ruling, and I'm not going to let him do it.

11 MR. YALOWITZ: I will talk to him and make sure we get
12 clear on this.

13 MR. HILL: The witness is sitting in the courtroom,
14 your Honor.

15 THE COURT: You can translate it for him also.

16 MR. YALOWITZ: So then there is circumstantial
17 evidence, which is that the day he was released was the day
18 that a terrorist leader was killed by IDF forces.

19 THE COURT: Who is going to put that evidence in?

20 MR. YALOWITZ: Alon Eviatar.

21 THE COURT: How does he know?

22 MR. YALOWITZ: Because that's his job is to know what
23 happens in the Palistinian arena.

24 THE COURT: His job may be to know that, but his job
25 is not necessarily to have firsthand knowledge.

FlfQsok2

Eviatar - Direct

1 MR. YALOWITZ: No. He's relying on documents; for
2 example, statements that can be tied to the defendant.

3 THE COURT: You would agree that that is not a basis
4 on which to offer that evidence for the truth because he
5 researched it regardless of how experienced and competent an
6 expert he is.

7 MR. YALOWITZ: I'm sorry. Which statement are you
8 talking about?

9 THE COURT: The statement that you say is a factual
10 statement about how he was really released. He can't say it.
11 He can't give the jury that fact.

12 MR. YALOWITZ: The fact of how he was --

13 THE COURT: Right.

14 MR. YALOWITZ: Or whether he was -- look, it's a
15 disputed issue.

16 THE COURT: He doesn't have any firsthand knowledge of
17 that. He is not any more competent to do that than you or I if
18 we picked up the same piece of paper that he looked at that
19 made him think that and makes us think that. That doesn't make
20 it evidence.

21 MR. YALOWITZ: So we put in a piece of paper that is
22 tied to the defendant.

23 THE COURT: OK. If that piece of paper is admissible
24 and is admitted in this record, that is the evidence of that
25 fact.

FlfQsok2

Eviatar - Direct

1 MR. YALOWITZ: Right. And the evidence says Mustafa's
2 death is terrible and we're going to avenge it.

3 THE COURT: OK.

4 MR. YALOWITZ: And the same day Abdullah Barghouti, a
5 well-known bomb-maker is out of jail.

6 THE COURT: Is that also before the jury in evidence?

7 MR. YALOWITZ: Yes, because Abdullah Barghouti says --

8 THE COURT: Where is that before this jury in
9 evidence?

10 MR. YALOWITZ: In Abdullah Barghouti's confession.

11 THE COURT: Is it in evidence?

12 MR. YALOWITZ: It will be. We haven't offered it yet,
13 but it will be. He says, "I was released on the day that Ali
14 Abu Mustafa was liquidated." So he says that's the day. Now,
15 your Honor said we can't say who released him, but I think he
16 can say "I was released."

17 THE COURT: Is that Abdullah Barghouti's confession
18 you're talking about?

19 MR. YALOWITZ: Yes, he should know if he was released.

20 THE COURT: That's right. He should know, and if he
21 wants to come into this courtroom and tell the jury under oath,
22 that's perfectly legitimate; but that doesn't address the
23 issues that we have been dealing with. The issues we have been
24 dealing with is that, no, you can't use his statement for the
25 truth of what he was interrogated about at this point to say

FlfQsok2

Eviatar - Direct

1 that he was released. I thought we went through that. I don't
2 know why there is a question about whether or not that's the
3 evidence that you are going to get in before this jury.

4 MR. YALOWITZ: That the date of his release -- I mean,
5 I didn't think it was a disputed issue of fact. I don't think
6 it's controversial. He is confessing, "I did a string of
7 bombings" and the fact that he got out of jail on a certain
8 day, I mean, that's a fair part of the narrative of his
9 self-incriminatory statements.

10 THE COURT: Not if you want to say they let him out of
11 jail to do the Hebrew bombing.

12 MR. YALOWITZ: No, my theory is not -- no. No. Let
13 me be very clear. My theory is not they let him out of jail to
14 do a bombing.

15 THE COURT: OK.

16 MR. YALOWITZ: My theory is, they gave an armed weapon
17 to a terrorist group. They gave a guy who knows how to make
18 bombs to a terrorist group, and then he went and did that.
19 That's my theory.

20 THE COURT: They didn't give him a bomb.

21 MR. YALOWITZ: They gave him something better than a
22 bomb. They gave him a bomb-maker.

23 THE COURT: I'm sorry, you confused me. What is the
24 evidence that you want to offer? That who gave him what?

25 MR. YALOWITZ: OK. The defendant --

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Eviatar - Direct

1 THE COURT: Who?

2 MR. YALOWITZ: PA.

3 THE COURT: Who?

4 MR. YALOWITZ: Jibril Rajoub and Ahmed Barghouti.

5 THE COURT: Gave him.

6 MR. YALOWITZ: Gave Hamas Abdullah Barghouti.

7 Abdullah Barghouti is a bomb-maker.

8 THE COURT: The evidence they gave him Abdullah
9 Barghouti is what?

10 MR. YALOWITZ: That he was in jail and he got out of
11 jail.

12 THE COURT: See, I don't have any problems with that.
13 That is not going to be a big mystery to this jury that he was
14 in jail and then he got out of jail. He must have got out of
15 jail because he committed a terrorist act; not in jail, out of
16 jail. So that is not the issue.

17 MR. YALOWITZ: And Ahmed Barghouti put him in a safe
18 house immediately after he was out of jail, which is Count 51
19 of Ahmed Barghouti's indictment which is in evidence.

20 THE COURT: That's already in the case.

21 MR. YALOWITZ: Right. So I would also like to say
22 that Ahmed Barghouti -- there are so many Barghoutis here. I
23 would also like to say that Abdullah Barghouti, the engineer,
24 got out of jail on a particular day; and on the day that he got
25 out of jail, the defendant made a statement saying they were

FlfQsok2

Eviatar - Direct

1 going to increase the violence. In essence, that's what they
2 said. We're going to make it -- we're going to make there be
3 more violence. And the guy who is in charge of that committee
4 that made that statement is Marwan Barghouti, the same guy who
5 both Ahmed Barghouti and Abdullah Barghouti say took him to the
6 safe house.

7 THE COURT: What's the form of the statement that you
8 want to offer?

9 MR. YALOWITZ: It's a publication by a joint committee
10 between Fatah and Hamas and other terrorist organizations.

11 THE COURT: And it shows the date of when that
12 statement was made?

13 MR. YALOWITZ: Correct.

14 THE COURT: OK.

15 MR. YALOWITZ: It shows the date on which this guy was
16 killed, Mustafa.

17 THE COURT: What shows the date on which Abdullah was
18 released?

19 MR. YALOWITZ: Abdullah's own statements, his personal
20 history -- why doesn't it come in as like a statement of
21 personal history?

22 THE COURT: Because we're not interested in his
23 personal history.

24 MR. YALOWITZ: We're interested in this item of
25 personal history.

FlfQsok2

Eviatar - Direct

1 THE COURT: It's not relevant to the jury. We don't
2 care where he grew up and went to school.

3 MR. YALOWITZ: We care about the day he got out of
4 jail.

5 THE COURT: Right. So you're going to tell me how
6 you're going to prove what day it is he got out of jail.
7 That's all you're going to tell me.

8 MR. YALOWITZ: I have to get my rule book, your Honor.

9 THE COURT: Tell me the physical piece of evidence
10 that you intend to use.

11 MR. YALOWITZ: His confession.

12 THE COURT: And his confession that says what?

13 MR. YALOWITZ: "I got out of jail" -- what he says is
14 "Jibril handed me over to Marwan and Ahmed on the day that Ali
15 Abu Mustafa was killed."

16 THE COURT: You show me that reference because I have
17 to look at that, and I will give that evaluation. The bottom
18 line is, as far as I'm concerned, this witness -- and I thought
19 we went through this and I'm going back to his report. This
20 witness has a basis to talk about in his expert experience the
21 relationship between the PA, PLO and Fatah, what he thinks the
22 relationship -- he can talk about financial payments. He can
23 be cross-examined about those issues, whether he knows what
24 he's talking about or doesn't know what he's talking about and
25 what he is basing that on factually. He can talk about general

FlfQsok2

Eviatar - Direct

1 prisoner release. I have no problems with that.

2 MR. YALOWITZ: Right.

3 THE COURT: If he has a factual basis either on direct
4 examination or on cross-examination to be able to explain to
5 this jury what evidence he is using to say that they released
6 prisoners. At least give us an example of how he accumulated
7 that opinion. If he wants to say that there's a relationship
8 with Fatah, if he can tell us on what information he concludes
9 that, that's fine. And the relationship between Al Aqsa
10 Brigade and Hamas, if he has a factual basis to do that and a
11 basis as an expert to do that, that's fine again.

12 But his personal opinions, the closer we get to this
13 in the context, his personal opinions about what happened with
14 Abdullah Barghouti don't seem to be within his expertise.

15 MR. YALOWITZ: I understand the Court's ruling on
16 this.

17 THE COURT: His comment, his personal comments about
18 who released him, why they released him, what they did, he
19 doesn't have -- and the little bit that he does have comes
20 from, only from Abdullah Barghouti's statements. For example,
21 I am looking at page 10 of this report. The specific sentence
22 at the end of the first paragraph about what he says is
23 relevant information about Abdullah Barghouti.

24 At the end of that statement is a footnote, and that
25 footnote cites Abdullah Barghouti's statement. That's what it

FlfQsok2

Eviatar - Direct

1 cites, OK? So that is the basis for his knowledge. OK? So I
2 am not going to let him put that in through the back door what
3 could not come in through the front door.

4 MR. YALOWITZ: I get it.

5 THE COURT: Either stay away from any specific
6 comments about his opinion about what happened with Barghout
7 if he is only basing that on what Barghouti said in a statement
8 he read or give me some other basis in this record for him to
9 comment, and I don't think there is any other basis, so I am
10 giving you the leeway to comment generally about these issues,
11 but I don't think he is qualified to make comments specifically
12 about, quite frankly, which individuals were participants in
13 the Hebrew University bombing. All right? So I'm just looking
14 through his report.

15 MR. YALOWITZ: It will be evident, and then I want to
16 raise two other things about this.

17 THE COURT: Part Four, starting on page 19 of his
18 report.

19 MR. YALOWITZ: What does that cover, your Honor? I
20 don't have the report.

21 THE COURT: I'm sorry, Part Three. Not Part Four, the
22 connection and relationship between the PA, PLO and Fatah.
23 That seems to be within his training and experience and
24 expertise.

25 Part five I think -- let me see what notes I've made.

FlfQsok2

Eviatar - Direct

1 What he calls payments to terrorists and their families, he's
2 researched that and wants to comment about how payments are
3 done. We're going to have numerous other people who are going
4 to testify. We had statements in the opening statements about
5 why payments were made. That is an issue of debate for the
6 jury and you can put in whatever you think is relevant on that.

7 MR. YALOWITZ: Great.

8 THE COURT: The Palistinian ministry of prisoners and
9 released prisoner affairs, and what he say is the general
10 policy based on whatever he says that he has reviewed about
11 who's released, how many people are released, how payments are
12 made. That in general I have no problem with, and I think
13 those related opinions -- now, if he has a basis and can point
14 to the evidence that he's reviewed on that that leads to a
15 conclusion about the release of terrorist prisoners by the PA,
16 it's what he calls the revolving door, then he can testify to
17 that.

18 Now whether or not you can all tie that to Abdullah
19 Barghouti, it is not his role, it is your role and the role of
20 the other evidence and what's a reasonable inference for the
21 jury to conclude?

22 Finally, Fatah's terrorist operations that he says
23 that he has evidence that he's reviewed a Fatah terrorist
24 operation. It seems to me that he has experience in that area
25 and can cite to the sources that he went to and statistics that

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Eviatar - Direct

1 he reviewed; and if I accept the cross-examination about that
2 opinion, that's his opinion and it can stand.

3 MR. HILL: Again, your Honor, just so we're clear,
4 just like the opinion --

5 THE COURT: Wait a minute. Mr. Yalowitz, quiet.
6 Don't do that. You have a bad habit. Every time they open
7 their mouth, you want to interrupt. Quiet. Let him say what
8 he's going to say.

9 MR. HILL: Just as with the opinions about Hebrew
10 University, I assume the witness is not going to be a conduit
11 for hearsay. We are not going to get hearsay statements
12 transmitted through this witness. If he has an opinions based
13 on hearsay, I understand you are saying you think those may be
14 permissible, but the witness should not be telling the jury
15 "so-and-so said this" or "this is what the newspaper said."

16 MR. YALOWITZ: Your Honor, may I be heard on this?

17 THE COURT: Wait a minute. Just so I can focus on the
18 issue. That is only partially correct. With regard to the
19 Hebrew University bombing, the players, what they did,
20 particularly with regard to Abdullah Barghouti, he doesn't have
21 any particular expertise that tells us anything about that in
22 particular, OK.

23 MR. HILL: Understood.

24 THE COURT: Now if he has expertise about a
25 relationship between organization, about what he calls a

FlfQsok2

Eviatar - Direct

1 revolving door policy, about payments to people who were
2 prisoners, he can comment on that and he can give examples of
3 that and he can say that he's looked at it and there's such a
4 pattern. I have no problems with that.

5 But he can't come in here and tell this jury it's his
6 opinion that the PA released Abdullah Barghouti. OK? This is
7 not that complicated. He should stay away from that area, and
8 you should instruct him now while you still have him on direct
9 examination that he should stay away from that area and stay
10 away from relaying to the jury things that he says he got from
11 looking at his out-of-court statement, his confession.

12 (Continued on next page)

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Flf3sok3

1 MR. YALOWITZ: Okay. I understand that, I will comply
2 with it. I think it is extremely important, your Honor, that
3 we be very, very clear that this rule applies to both sides.
4 Because as you know, on Christmas Eve for the first time the
5 defendants said to the Court, we're going to come in here to
6 prove that Abdullah Barghouti escaped. First time I heard
7 that. We don't have any documents of any kind that said that.
8 I don't know what that witness is going to say.

9 THE COURT: We can deal with it as early or as late as
10 you want to deal with it. If he's just the governor of
11 whatever it is, that doesn't give me any basis to believe that
12 he has any first-hand knowledge about whether or not somebody
13 left the door unlocked that day and everybody ran out the door,
14 or that somebody complicit with the guys who wanted to escape
15 let them escape, or they just told people, look, don't worry
16 about it, go on home, and opened the door for them.

17 The witness they have proffered so far they gave me no
18 basis to believe he had any knowledge about whether anybody
19 escaped, was released, escaped with the assistance of the PA or
20 the PLO or their personnel or employees or not. I don't know
21 where they are going to go with that. They want that resolved
22 real early so this guy doesn't fly from the West Bank. I'll
23 resolve that as quickly as possible. But, partially it will
24 depend on what you attempt to do.

25 MR. YALOWITZ: Sure.

Flf3sok3

1 THE COURT: I'm not going to let you through this
2 witness get in Barghouti's statements.

3 MR. YALOWITZ: You mentioned that.

4 THE COURT: A couple of times. You keep saying you
5 don't understand it. That's why I keep mentioning it.

6 MR. YALOWITZ: All right. I think I get it. You
7 know, we'll take it question by question. I'm sure everybody
8 will help me understand.

9 THE COURT: Mr. Hill.

10 MR. HILL: Mr. Rochon thinks I may have interrupted
11 your Honor as you were describing the topics in Mr. Eviatar's
12 reports.

13 THE COURT: I think that's pretty much it. I can go
14 back and look. I understand your objection to his
15 qualifications, and we'll see if I can qualify him and you can
16 cross-examine him about whether or not his opinions are valid
17 or not valid. I think that's all that needs to be said.

18 MR. HILL: Thank you, your Honor.

19 MR. YALOWITZ: I just want to be clear, I hadn't
20 finished saying the topics he is going to cover. I think we've
21 very well laid it out in his report and in my letters to the
22 Court, policy, practices, procedures, I don't want some kind
23 of, oh, you didn't mention it to the judge at this second. But
24 okay, that's fine.

25 THE COURT: You're getting to be repetitive like me.

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1 MR. YALOWITZ: Well, imitation --

2 THE COURT: What else did you want to say again?

3 MR. YALOWITZ: I was going to say imitation is the
4 sincerest form of flattery, Judge.

5 I would like to give the Court Exhibit 427.

6 THE COURT: Let me look at that.

7 MR. YALOWITZ: At the lunch break. We'll flag the two
8 questions that we care about. One of them is the names. I'm
9 going to give it to you unredacted. One of them is the names
10 and titles of the people, okay, I get that. I'm giving it to
11 you unredacted, but I get your ruling on that. I'm not
12 rearguing it.

13 THE COURT: This is the confession statement rather
14 than the in-court statement?

15 MR. YALOWITZ: Right. But the other one is the
16 question is something like, what did they do with you after the
17 interrogation. And the answer is they kept us in the prison
18 until the death of this guy, then they released us. So you'll
19 look at it and you'll figure out what your ruling is.

20 THE COURT: All right. Take a short --

21 MR. YALOWITZ: I think we have all the information I
22 have.

23 THE COURT: Take a very short break so we can bring
24 the jurors back.

25 (Recess)

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(In open court; jury present)

THE COURT: I apologize for the delay I wanted to resolve some issues so we can move forward efficiently.

Mr. Yalowitz.

MR. YALOWITZ: Sure. Thank you so much, your Honor.

BY MR. YALOWITZ:

Q. Mr. Eviatar, can you describe for the jury what methods you used in order to prepare for your testimony that you're going to give them.

A. First of all, I thoroughly read all of the material that I received from the attorneys. I read through the material a number of times, in English and in Arabic. I checked the translation very carefully, I checked the sources very carefully, I cross referenced them in order to make sure that they were credible and reliable, that they were based upon solid and sound sources.

On the other side, I collected materials myself. All of them were open source materials. I checked their credibility in the Arabic language. I listened to broadcasts myself. I read articles myself. I formulated all of that information together with my years of -- my great many years of experience as an expert. I formulated that into one solid picture of evidence.

Q. Did you have occasion to review files obtained from the Palestinian Authority itself?

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Eviatar - direct

1 A. Yes, of course I did.

2 Q. What kinds of files did you have the opportunity to review
3 in the original Arabic?

4 A. For example, I received, I received original reports of the
5 Palestinian General Intelligence Service. I received, for
6 example, entire files of what's called shahids or martyrs.
7 These are original documents that we received from the
8 Palestinian Authority, and they constitute a kind of personal
9 file of each shahid or martyr. And there are other materials
10 and examples with respect to the type of material that I
11 received from the Palestinian Authority in Arabic, and I
12 examined those sources as well.

13 Q. Did that include payroll records?

14 A. Definitely. I think that there were dozens of documents,
15 perhaps even hundreds of documents, that show that, that
16 present transfers of funds from the Palestinian Authority to
17 Palestinian prisoners in the prisons who had been charged with
18 terrorist attacks.

19 I saw, for example, I received in those materials,
20 original reports of payments that were made by the Palestinian
21 Authority to the Fatah movement in the West Bank. There are
22 dozens of examples of that type.

23 Q. Did you have the opportunity to review personnel files of
24 various individuals who are employees of the Palestinian
25 Authority?

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Eviatar - direct

1 A. Yes, I reviewed dozens of files of that type, as we have
2 described here.

3 Q. Did you have the opportunity to look, like we did, did you
4 have the opportunity to look at convictions of individuals who
5 were convicted of terror crimes?

6 A. Yes, certainly. I read all of the legal documents,
7 including the convictions themselves, of the senior members of
8 the Palestinian Authority, the senior members of the various
9 branches of the Fatah. I read the files of other people who
10 had been charged with terrorist activity, and are currently
11 incarcerated as a result of their offenses.

12 Q. Did you have the opportunity to read official government
13 reports by the United States government and by the government
14 of Israel?

15 A. Yes, certainly, I read several reports of that type.

16 Q. Did you have the opportunity to review original Arabic
17 documents published by the Palestinian Authority itself on
18 their own websites?

19 A. I have read hundreds of those reports.

20 Q. Did you have the opportunity to evaluate public source
21 material tied to terror organizations in particular?

22 A. Yes, I have read original reports in Arabic of the
23 terrorist organizations that belong to the Fatah, that belong
24 to Hamas, the Al Aqsa Martyrs Brigade, which belong to the
25 Fatah. They themselves publish their theory, their philosophy,

Flf3sok3

Eviatar - direct

1 their rules, and their objectives.

2 Q. Now, in evaluating all this material, what methods did you
3 use to break it down and sort it out?

4 A. First of all, I always make sure that the material is cross
5 referenced. I never base myself on a single source. I make
6 sure that the material appears on the official websites of
7 those entities, of those movements, of those organizations. I
8 check additional material to make sure that it corresponds with
9 other material. I examine the identity of the people whose
10 names appear in the documents, and I also coordinate that with
11 all of the knowhow that I have accumulated over the course of
12 the years.

13 Q. How does that work that you just described, how does that
14 compare to the work that you and your team did when you were a
15 field officer studying the Palestinian arena in the government?

16 A. The work method that I followed during the course of my
17 preparation, the preparation for my expert opinion here, is
18 identical to all of the professional tools and instruments that
19 I made use of and that I worked with during the course of my
20 years in the military.

21 There are a number of stages in an investigation of
22 this kind of collecting information, cross referencing it,
23 verifying it, researching it, processing it, and drawing the
24 correct conclusions from that data.

25 Q. Thank you, Mr. Eviatar.

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Eviatar - direct

1 MR. YALOWITZ: Your Honor, I ask that the Court
2 qualify Mr. Eviatar as an expert witness to provide information
3 about the PLO and the PA and Fatah, to provide information
4 about the policies and practices of the Palestinian Authority
5 and the PLO, as they relate to support of terrorism, to
6 describe the relationship between the defendants and the Al
7 Aqsa Martyr Brigades, to describe the relationship between the
8 defendants and the Hamas terror organization, and to describe
9 those two terror organizations, Al Aqsa Martyr Brigades and
10 Hamas.

11 MR. ROCHON: No voir dire.

12 THE COURT: You can inquire on that basis. He's so
13 qualified.

14 MR. YALOWITZ: Thank you so much, your Honor.

15 BY MR. YALOWITZ:

16 Q. I'd like to begin with a little bit of regional background
17 and just to give the jury an overview of --

18 MR. HILL: Your Honor may we approach?

19 (Continued on next page)
20
21
22
23
24
25

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Eviatar - direct

1 (At the sidebar)

2 THE COURT: Now you have another issue?

3 MR. HILL: Something just appeared on the screen
4 that's never been given to me.

5 THE COURT: What are you getting ready to do?

6 MR. YALOWITZ: I'm going to show him a map of Israel
7 which I showed in opening statement.

8 THE COURT: That wasn't what was on the screen. Is
9 there something else you are going to put up on the screen,
10 other than a map of Israel?

11 MR. YALOWITZ: No.

12 THE COURT: Okay. So take down the one you just put
13 up, and put up the map of Israel.

14 MR. YALOWITZ: My mistake. Is that it?

15 MR. ROCHON: If we haven't seen it --

16 MR. YALOWITZ: Wait a minute.

17 THE COURT: Stop. Are we going to fight about the map
18 of Israel?

19 MR. ROCHON: No.

20 THE COURT: Put up the map of Israel.

21 MR. YALOWITZ: But --

22 THE COURT: There is no issue.

23 MR. YALOWITZ: Fine. The words "regional background"
24 is not going to be put up again.

25 THE COURT: Put that up. If you are going to put

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Eviatar - direct

1 something else up and they haven't seen it, don't put it up.

2 MR. YALOWITZ: Understood.

3 (Continued on next page)

Flf3sok3

Eviatar - direct

(In open court)

THE COURT: Mr. Yalowitz, do you have something of greater detail?

MR. YALOWITZ: We do. Why don't we --

THE COURT: Let's move forward.

MR. YALOWITZ: Why don't we show the jury the map that -- there we go. Thank you.

Q. So, can you describe just for those who haven't been there, what we're looking at, Mr. Eviatar.

A. We see an enlarged picture here of the tiny red spot on the right-hand map. The map on the left depicts the territory of the State of Israel which is in the western part of the Middle East. Around the State of Israel in the north and in the south, are Arab countries in which we know al Qaeda and jihad organizations are active.

Within the territory of the State of Israel, I'm referring to the brown areas here, we see the West Bank on the right, and the Gaza Strip on the left. These are territories which for the most part are under the control of the Palestinian Authority.

We can see on the right side the black dot. That depicts Jerusalem, the capital and largest city in Israel. North of it is the city of Ramallah, which is the Palestinian center of government.

Just by way of illustration, the distance between

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Eviatar - direct

1 Ramallah and Jerusalem is about 7 miles in my estimation. The
2 distance between Israel's western border on the Mediterranean,
3 to the western part of the West Bank where we see the green
4 line, this narrow strip is also only about 8 or 9 miles wide.
5 This is the territory of the State of Israel, in fact, from
6 1967 up to the present day.

7 Q. Could you describe the green dotted line that the jury sees
8 on the map. At least those who can perceive the color green,
9 which I'm not one of them.

10 A. The green line is the unofficial name given to a kind of
11 border, which is also unofficial, which was determined in 1949,
12 which in fact divides between the territory of the State of
13 Israel, up until 1967, and continues to this day, and separates
14 it from the Palestinian territories which are named here as the
15 West Bank. The green line which is in fact what it is called,
16 it was simply drawn on a map with a green marker, that's why
17 it's given that name.

18 Q. What is the significance of Ramallah in terms of the
19 Palestinian Authority itself?

20 A. Ramallah represents the place where all the Palestinian
21 governmental ministries and entities and agencies reside. We
22 heard in recent days the term the mukataa. The mukataa is the
23 Palestinian administration or government. It is located in
24 Ramallah, that is where the Palestinian president resides, as
25 well as the government, the Parliament, the security services,

F1f3sok3

Eviatar - direct

1 and all the official agencies that are in charge of the
2 Palestinian territories.

3 Q. Thank you so much.

4 MR. YALOWITZ: Your Honor, we move in evidence the map
5 that Mr. Eviatar described. We would offer it as Plaintiff's
6 Exhibit 1151.

7 THE COURT: Any objection?

8 MR. HILL: No objection.

9 THE COURT: It will be admitted into evidence as 1151.

10 (Plaintiff's Exhibit 1151 received in evidence)

11 A. Can I point out a fact in this regard about Ramallah?

12 Q. Will you point out a fact in this regard of relevance to
13 the jury, please.

14 A. My office in the West Bank, in a place called Beit El, when
15 the window is open, I could see Ramallah facing me.

16 Q. Thank you. Now, I want to focus on the period 2002 to 2004
17 in Israel and ask you what was happening at that time in terms
18 of terrorism and security.

19 MR. ROCHON: Objection. It is overly broad.

20 THE COURT: I'll overrule it. You can answer.

21 A. The year 2002 was the pinnacle of a terrorist onslaught
22 which was characterized by terror attacks that occurred every
23 few days of every type. Shooting by terrorists on the roads,
24 roadside charges on the roads, suicide bombings in cafes,
25 buses, other public places, in places in which Israeli

Flf3sok3

Eviatar - direct

1 civilians gathered.

2 This period, or rather the characteristics of this
3 period as I am depicting them, the height came in March 2002.
4 The features that I've just described in regard to the
5 intensity of the violence and terrorism continued on in 2003,
6 as well as in 2004. But, at varying levels of intensity.

7 One might say that the Second Intifada, which is the
8 name that was given to this wave of violence, waned towards the
9 end of 2004.

10 Q. Could you explain for the jury what the term Al Aqsa
11 Intifada means?

12 A. Of course. This is the name given by the Palestinian
13 Authority to this wave of violence. "Intifada" in Arabic means
14 a popular uprising in a violent context. Al Aqsa is the name
15 of a holy mosque which is located on the Temple Mount in
16 Jerusalem. And the PA decided to call these violence events
17 after that place, which is holy to them in Jerusalem.

18 Q. Thank you. I would like to turn now to an overview of the
19 PLO and the Palestinian Authority and Fatah. Would you
20 describe the main components of the Palestinian government as
21 they existed during the years 2002 to 2004.

22 A. The Palestinian Authority, which is the government, the
23 chairman of the Palestinian Authority, that was Yasser Arafat
24 during that period. Under him is a Palestinian government.
25 From the year 2003 it had a prime minister appointed to it.

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Eviatar - direct

1 Until that time, Yasser Arafat was the prime minister as well.

2 The Palestinian government includes all the
3 governmental ministries as we know them. It includes military
4 security services. During that time there were 17 Palestinian
5 security services. Parallel to the government, there is an
6 entity known as the Palestinian Legislative Council, which is
7 its parliament.

8 Parallel to the systems that I have just described,
9 there is also a law enforcement system as well. It includes
10 courts, prisons, places of detainment, a prosecution system.
11 The entire system that we're familiar with that is part of a
12 legal system.

13 Q. Let's go to the PLO. What was that organization as it
14 existed during the years 2002 to 2004?

15 A. That organization, the initials of which stand for the
16 Palestine Liberation Organization, this name has remained
17 unchanged since its establishment in 1964. Yasser Arafat was
18 the head of the organization. The organization in fact
19 established the Palestinian Authority, and served as an
20 umbrella organization above the Palestinian Authority during
21 the period that is relevant to this discussion.

22 Q. Could you describe at a very general level the role that
23 the PLO had in negotiations with Israel that led to the
24 Palestinian Authority structure you described.

25 A. The PLO, the Palestine Liberation Organization, was the

Flf3sok3

Eviatar - direct

1 official entity on behalf of the Palestinians that held
2 negotiations with Israel which created the Oslo Agreement, in
3 the year 1993, and which was updated, as it were, in '94 and
4 '95. PLO is signed to that agreements.

5 Q. Who is the other signatory besides the PLO?

6 A. Israel is signed to those agreements, and the United
7 States.

8 Q. Now, when was the Palestinian Authority itself established
9 generally?

10 A. The Palestinian Authority was established in late 1994.

11 Q. Who established it?

12 A. The Palestine Liberation Organization.

13 Q. Who -- okay.

14 I want to ask you about the agreement that's
15 operative. Is there an agreement today -- let me start again.

16 Was there an agreement during the years 2002 to 2004
17 that set out powers and commitments made by the PA and the PLO?

18 MR. HILL: Objection.

19 THE COURT: Overruled. He can answer.

20 A. Since the signing of the agreement between the parties,
21 which is known as the Oslo Agreement, up to the present day,
22 including in the years 2002 to 2004, that agreement is binding
23 upon the parties signed to it, including the Palestinian
24 Authority.

25 Q. Did you have an opportunity to review that agreement in

Flf3sok3

Eviatar - direct

1 connection with your work during the years that you were in
2 government service?

3 A. Of course. That agreement served for me, as the person who
4 was the commander of an area in the West Bank, as a binding
5 document. It bound me and my superiors. I can say that I knew
6 it by heart.

7 Q. Have you had an opportunity to review that document in
8 preparation for your testimony here today?

9 A. Yes, for sure. I read it in all three languages: English,
10 Hebrew, and Arabic.

11 MR. YALOWITZ: We've marked it for identification as
12 Exhibit 532.

13 Your Honor, the plaintiffs move the admission into
14 evidence of Exhibit 532, which is the Oslo Accord that the
15 witness is testifying about.

16 THE COURT: It will be admitted into evidence.

17 (Plaintiff's Exhibit 532 received in evidence)

18 MR. YALOWITZ: Thank you. Why don't we put it up.
19 And we can talk about it a little bit.

20 Q. I'd like to begin by focusing with you on some of the
21 particular provisions, and I want to focus to begin on Article
22 15, pages eight and nine of the exhibit.

23 MR. YALOWITZ: With the Court's permission, I'd like
24 to just read a portion of Article 15 and then ask the witness
25 some questions about it.

Flf3sok3

Eviatar - direct

1 THE COURT: Yes, sir.

2 MR. YALOWITZ: Thank you. "Article 15. Prevention of
3 Hostile Acts.

4 "Both sides shall take all measures necessary in order
5 to prevent acts of terrorism, crime and hostilities directed
6 against each other, against individuals falling under the
7 other's authority, and against their property, and shall take
8 legal measures against offenders."

9 Q. My question is, when it says "both sides," who are the two
10 sides that they're talking about in that agreement?

11 A. One side is the Palestinian Authority. The other side is
12 Israel.

13 Q. Thank you. Now, was there a protocol attached to the
14 agreement concerning security arrangements?

15 A. Yes. There was a special chapter that dealt with the
16 security issues. It fully specified the obligations of the
17 parties, and it's included in this entire agreement.

18 Q. Is that annex one of the agreement? Do you recall?

19 A. May I see the title of appendix one so I may make sure?

20 MR. YALOWITZ: Bear with us. See if we can line it
21 up.

22 Q. Do I have the right one?

23 A. Yes, I have it here in front of me. This is the agreement,
24 this is annex one.

25 Q. Okay. Great. Now, I'd like to direct you and the jury to

Flf3sok3

Eviatar - direct

1 article two of annex one, which is the security policy for the
2 prevention of terrorism and violence. And let me just ask you
3 as a preliminary, was this policy in annex one directed
4 particularly at the Palestinian side?

5 A. Unequivocally yes.

6 Q. So, I just want to highlight a couple of pieces for the
7 jury. Let's look at paragraph B together. "The Palestinian
8 police will act systematically against all expressions of
9 violence and terror."

10 Was that an obligation of the Palestinian Authority
11 during the years 2002 to 2004?

12 A. Certainly. That was one of its obligations.

13 Q. Let me point you to paragraph D. "The Palestinian police
14 will arrest and prosecute individuals who are suspected of
15 perpetrating acts of violence and terror."

16 Was that an obligation imposed on the Palestinian
17 Authority during the years 2002 to 2004?

18 A. Yes.

19 Q. Let's look at paragraph two together. "Each side shall
20 immediately and effectively respond to the occurrence or
21 anticipated occurrence of an act of terrorism, violence, or
22 incitement, and shall take all necessary measures to prevent
23 such an occurrence."

24 Was that an obligation that the Palestinian Authority
25 undertook to be bound by during the years 2002 to 2004?

Flf3sok3

Eviatar - direct

1 A. Absolutely. They are a signatory to that.

2 Q. Let me give you one more, if Ms. Machnes is ready. "With a
3 view to implementing the above, each side shall, in accordance
4 with the provisions of this agreement, carry out the following
5 functions in the areas under its security responsibility.

6 "C. Apprehend, investigate, and prosecute
7 perpetrators and all other persons directly or indirectly
8 involved in acts of terrorism, violence, and incitement."

9 Was that also an obligation of the Palestinian
10 Authority?

11 A. The answer is an unequivocal yes.

12 Q. I want to ask you about this phrase "security
13 responsibility" up under item three. I think I have to ask you
14 about one of the basic functions in the agreement which is
15 Areas A, B and C within the West Bank.

16 Are you familiar with that terminology, Areas A, B and
17 C?

18 A. I am very well familiar with it.

19 Q. So, let's begin with Area A. What was that?

20 A. The A territories were determined by the accord between the
21 parties to be areas that would be under the exclusive control
22 of the Palestinian Authority from a defense perspective, as
23 well as from a civilian perspective.

24 Q. Generally speaking, what kinds of areas, what kinds of
25 areas were in Area A?

Flf3sok3

Eviatar - direct

1 A. I just wanted to continue that. All of the Palestinian
2 cities, some of whose names we heard earlier today, such as
3 Ramallah, Nablus, there are other cities as well, all of them
4 fall within the realm of area A.

5 Q. Was the city of Tulkarm in area A?

6 A. Certainly.

7 Q. How about the city of Jenin, was that in area A?

8 A. Jenin was as well. I can specify all the cities if you
9 wish.

10 Q. Sure. Why don't you just do it from memory.

11 A. I'll start from north to south. Jenin, Tulkarm, Qalqilya,
12 Nablus, Ramallah, Jericho, Bethlehem, Hebron.

13 Q. About how many people live in the West Bank territory or
14 how many people lived in that time period in the West Bank?

15 A. During that period of time in the West Bank, approximately
16 2.3, 2.4 million Palestinians resided there.

17 Q. Of that, call it 2.4 million, how many lived in area A?

18 A. Area A included, included more than 50 percent. Even
19 60 percent.

20 Q. Let's go to Area B. What was that area in terms of sort of
21 geography or urbanity or something like that. That's not a
22 good word. Let me withdraw it and try a different question.

23 What was in Area B?

24 A. Area B included all of the areas that were under Israeli
25 security control and Palestinian civilian control. In effect,

Flf3sok3

Eviatar - direct

1 Area B included all of the rural areas of the West Bank,
2 including in effect hundreds of Palestinian villages. Just to
3 explain further, a Palestinian village can include 30 or 40,000
4 people.

5 Q. And did the Palestinian police patrol in Area B?

6 A. According to the agreement and the coordination between the
7 parties, in several central B areas, for example, large
8 villages, there were Palestinian police stations. And in areas
9 in which there was no Palestinian police presence, generally
10 what would happen in the field was that the Palestinian
11 Authority would request permission from Israel to send
12 Palestinian police to those villages. Generally speaking,
13 Israel would approve requests of this type.

14 Q. What percentage of the Palestinian population lived in A
15 and B combined?

16 A. More than 90 percent.

17 Q. So then what was Area C?

18 A. Area C was a further definition of that division. They
19 were Palestinian villages that were under full Israeli control.
20 I myself, in the area in which I served as a commander, I was
21 responsible for several villages in Area C. All in all, in the
22 entire West Bank, there were between 100,000 and 150,000
23 Palestinians in that area.

24 Q. 150,000 in Area C?

25 A. In the entire West Bank in the C areas.

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Eviatar - direct

1 Q. Now, I want to go back to the text of the Oslo Accord.

2 MR. ROCHON: Your Honor, if I may, and I would object,
3 either ask to approach the bench or take a break for lunch or
4 sit down if you tell me to sit down.

5 THE COURT: I am going to overrule your objection and
6 tell you to sit down.

7 MR. ROCHON: Thank you.

8 Q. Why don't we go to article four of annex one, the
9 Palestinian police. Does article four of annex one describe
10 the duties and functions of the Palestinian police as you
11 understood it?

12 A. The answer is yes.

13 Q. Can we look together at paragraph F of -- I guess paragraph
14 1F of article four. Palestinian police.

15 May I, your Honor?

16 THE COURT: Yes, sir.

17 MR. YALOWITZ: "Palestinian police duties and
18 functions.

19 "As detailed in the Palestinian law, the Palestinian
20 police shall carry out its duties and functions in accordance
21 with this agreement as follows:

22 "Subparagraph F, combating terrorism and violence, and
23 preventing incitement to violence."

24 Q. Is that text consistent with your understanding of the
25 obligations undertaken by the Palestinian Authority during the

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Eviatar - direct

1 years 2002 to 2004?

2 A. Unequivocally yes. If I may just add and emphasize to the
3 members of the jury and to the Court, every Palestinian city
4 which I mentioned previously was under the control of the
5 Palestinian Authority and the security forces operate there.
6 In other words, the Palestinian security forces that operate in
7 Ramallah, corresponding forces exist in the other cities as
8 well in Hebron in Tulkarm, etc.

9 MR. YALOWITZ: Your Honor, would it be convenient for
10 the Court to take a lunch recess?

11 THE COURT: Sure. Ladies and gentlemen, let's take a
12 lunch break then. Don't discuss the case, keep an open mind.
13 I'll see you at 2 o'clock. We'll start promptly.

14 (Jury excused)

15 (Continued on next page)

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1 THE COURT: You can step down, sir. Is there anything
2 we need to address, Mr. Rochon?

3 MR. ROCHON: Yes, your Honor, I think we do. I think
4 it is fairly serious and requires a mistrial.

5 THE COURT: Okay.

6 MR. ROCHON: The issue, your Honor, is this. It is
7 the use of the Oslo Accords that I'm speaking to. In this
8 case, when the defendants at the beginning of this litigation
9 sought to have this case not in the United States courts and
10 represented that it involved political questions, involved
11 areas where it would require a court or a jury to address
12 issues of international relations and diplomatic agreements
13 entered into by the United States and Israel and the
14 Palestinian Authority, the plaintiffs argued that this was a
15 simple tort case in which we would try this case, and we did
16 not need to implicate all of those issues. That's a
17 significant part of both the basis of their arguments to keep
18 the case here, and part of the reason why we're still here.
19 Because the defendants had argued of course this case does not
20 belong in the United States court, because it inevitably would
21 involve these kinds of issues. But we got assurances this case
22 would not be politicized. We got assurances they would not try
23 to try the Second Intifada. Now the plaintiffs have put into
24 evidence --

25 THE COURT: Without objection.

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1 MR. ROCHON: Your Honor, we've objected to these
2 exhibits. We've objected.

3 THE COURT: Did you object to this exhibit? You
4 didn't object today.

5 MR. ROCHON: I just did object. You told me to sit
6 down.

7 THE COURT: No. You didn't object when he offered
8 this exhibit.

9 MR. ROCHON: Your Honor --

10 THE COURT: He offered the exhibit and it came in
11 without objection.

12 MR. ROCHON: I move to strike the exhibit.

13 THE COURT: It is a little late now, that's what I'm
14 emphasizing. You didn't object to its admissibility. Now to
15 say that you have some objection to him reading from it or from
16 utilizing it, that was the nature of your objection, that's why
17 I told you to sit down. It is already in evidence. He can do
18 whatever he wants with it now.

19 MR. ROCHON: If he's now moved this in, the
20 defendants -- and they're claiming, they are going to claim
21 that the defendants violated the Oslo Accords as part of their
22 case. That's what they have just put in.

23 THE COURT: That doesn't advance their case.

24 MR. ROCHON: Why did they put in what our obligations
25 are under it?

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1 THE COURT: They want to argue and they've
2 consistently argued, and you've argued against it, that they
3 had responsibilities with regard to terrorist acts and that
4 they knew what those responsibilities were, and although they
5 took a public position that they were meeting their
6 responsibilities, in fact what they were doing was just the
7 opposite. That's the relevance.

8 MR. ROCHON: If they claim those responsibilities came
9 from an international accord as opposed to the standards that
10 are appropriate for a tort case, that's a different thing.

11 THE COURT: I agree.

12 MR. ROCHON: We've argued to the Court that we're
13 entitled to a Monell standard as a governmental entity in
14 regards to the evaluation of our employees. Now they're
15 putting in some stuff about whether we as an entity have
16 complied with this international accord. And they are going to
17 claim that I can't go into whether Israel complied with this
18 international accord, whether it is even a valid accord if both
19 sides violated it.

20 Because this accord had all sorts of obligations of
21 Israel that, as you know, the Palestinians think Israel didn't
22 live up to. They've opened the door to everything they said
23 they wouldn't do. They've politicized this case. They have
24 been saying all along we are going to politicize this case.
25 And now we've talked about the Oslo Accords and the Palestinian

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1 Authority's obligations under the Oslo Accords and whether
2 we've complied with them. And who is really politicizing this
3 case in front of the jury.

4 THE COURT: Well, first of all, whether they've
5 complied with the Oslo Accords has not been the argument.
6 Second of all, as I indicated, this was an exhibit that came
7 into evidence without objection. Without objection. This may
8 be your objection now. But you did not have such an objection
9 when he offered this document in evidence, and you did not make
10 such an argument to keep this document out of evidence.

11 So this document was admitted into evidence. And then
12 once it is admitted into evidence, pursuant to our rules, he is
13 entitled to read from this document any portion, particularly
14 any portion that has to do with terrorism and people's
15 agreement -- not responsibility -- but their agreement with
16 regard to how they were going to deal with terrorism. Their
17 position is with the evidence is just the opposite. The
18 evidence is that they agreed that they would handle terrorism
19 in a certain manner, and the evidence is that they did not,
20 even though they agreed to suppress terrorism, they were
21 involved in fact in actions that are inconsistent with that,
22 which would lead the jury to believe that not only did not
23 attempt to suppress terrorism, but they were in fact involved
24 in terrorism.

25 This has no political implications. It is either they

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1 did or they didn't. As I say, first of all, the objection to
2 this document is a late objection. And was not an objection
3 made when the document was offered. The document is already in
4 evidence. And you're going to have to live with it.

5 Second of all, the nature of the questions that have
6 been asked with regard to the document, and the nature of the
7 parts that have been read.

8 And also, I must say, also that it is still consistent
9 with this witness's testimony about the structure of the
10 situation, the relationships between the PA, the PLO, how it
11 was created, who has authority, all of those issues. This is
12 reflective of that and related to that.

13 With regard to someone making some political
14 statements about this case, the only one sort of put this in a
15 political context at this point is your statement just now.

16 MR. ROCHON: Not in front of the jury. I've not done
17 anything in front of the jury. With you what I've suggested is
18 the plaintiffs have put us in that position. And when they
19 proffered what this witness was going to say, they didn't say
20 he was going to comment whether or not the Oslo Accords were
21 complied with or not. The Oslo Accords created my client,
22 which was a relevant and proffered portion of his testimony.

23 As far as what the Oslo Accords have to say about as
24 to whether anyone complied with the Oslo Accords, it wasn't
25 proffered, it wasn't anything you said they can get into. I

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1 dare say if they had said they wanted to get into whether my
2 client complied Oslo Accords, you never would have let them,
3 because it is not relevant to the tort standard.

4 THE COURT: What is it you're asking me to do?

5 MR. ROCHON: Strike this. Strike the testimony about
6 it.

7 THE COURT: Mr. Yalowitz?

8 MR. YALOWITZ: Your Honor, the motion should be
9 denied.

10 THE COURT: I'm going to deny the motion. I think
11 this is appropriate. If you wish to make some arguments with
12 regard to this, you can. If you want further inquiry, you can.
13 But I think, one, the document was admissible. Two, I admitted
14 it as evidence without objection. Three, the questions related
15 to the document and the portions read from the document were
16 appropriate, given that the document is fully in evidence. And
17 four, I don't think that this raised issues of some
18 international political issue. The issues are still the same
19 for the jury. They are to evaluate the way they should
20 evaluate, and I'm sure you're perfectly capable of arguing to
21 them that the Oslo Accords have absolutely nothing to do with
22 what the plaintiffs claim that the defendants did and what they
23 are liable for.

24 MR. ROCHON: I'd ask the court to so instruct the jury
25 that the Oslo Accords have nothing to do with what the

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1 plaintiffs allege that the defendants did. Therefore, if
2 that's the Court's view, that's our view as well.

3 THE COURT: That's your view. You can argue that
4 view. My view is I cannot make that statement because I
5 admitted the Oslo Accords. It is for the jury to determine
6 what weight to give to the Oslo Accords and what relevance it
7 does have. They made a basic showing without objection of its
8 admissibility. So it will be inappropriate for me to give them
9 such an instruction, if I admitted it into evidence for the
10 consideration to give whatever weight they deem is appropriate,
11 given the arguments and the use the parties want to make.

12 MR. ROCHON: I moved for a mistrial as well, your
13 Honor. I understand, given your other rulings.

14 THE COURT: That motion is also denied.

15 MR. ROCHON: Thank you, sir.

16 MR. YALOWITZ: Your Honor, just one thing. Please
17 don't assume from my general silence that I agree with anything
18 Mr. Rochon said. He made some statements that I disagree with.

19 THE COURT: I would shock myself if I ever made that
20 assumption.

21 MR. YALOWITZ: When there is a misstatement and I
22 don't correct it, I don't want to hear back later, well, that I
23 was silent. But we don't need to go into it. I don't agree
24 with everything he said.

25 MR. ROCHON: Your Honor, we have some issues. I don't

F1f3sok3

1 know if we are going to get to the Shawbaki conviction this
2 afternoon. And 212 was another one. If we're not going to get
3 to it this afternoon, we can deal with it some other time.

4 MR. YALOWITZ: I don't know. Shawbaki I won't get to
5 this afternoon. 212 I might.

6 THE COURT: I thought you were going to give me a copy
7 of 212.

8 MR. ROCHON: I think Mr. Hill proffered one. He
9 handed you one this morning.

10 THE COURT: I have 212. I read 212.

11 I'll give you three more minutes, but I have a
12 sentencing to do. With 212, what is your objection? Quite
13 frankly, I thought this was your argument, not your objection.

14 MR. HILL: It postdates all of the attacks at issue.
15 It is not relevant. It's got prejudicial statements that are
16 going to prejudice our client.

17 THE COURT: You've got to give me something more
18 specific than that. I understand that it postdates, but I
19 assume it reflects the consistent policy of the PA throughout
20 this period of time.

21 MR. HILL: There is no such evidence.

22 THE COURT: With regard to the attempt to release
23 prisoners, with regard to treating prisoners, providing
24 financial support on an indiscriminate basis for prisoners, and
25 for attempting to negotiate better treatment and release of

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1 prisoners.

2 MR. HILL: If that's what it's going to be offered
3 for, that's not what it says.

4 THE COURT: That's what it said to me. What is it
5 that you say is prejudicial?

6 MR. HILL: I'm concerned about this statement: "The
7 purpose of this visit, said Qarage, is to draw attention to the
8 700 military detainees who are held in the prisons of the
9 occupation and open this file so that we can work on their
10 release, especially since most of them were detained while they
11 were on duty and wearing their military uniforms."

12 So I suspect the plaintiffs will argue that that's
13 evidence of our liability. I don't want them to be able to
14 make that argument.

15 THE COURT: I don't know, I don't know what the
16 evidence is supposed to show as to what technically is a
17 military detainee, and I didn't read this to say that they were
18 arrested for committing terrorist acts while they were in
19 uniform.

20 MR. HILL: Well, if the plaintiffs --

21 THE COURT: You know better than I what this is
22 referencing.

23 MR. HILL: None of the people in this case were, so
24 that's why it is not relevant.

25 THE COURT: I'm not thinking about the relevance, I'm

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1 trying to figure out the prejudice. I'm trying to figure out
2 what it is you say that this is going to mean to the jury after
3 you and the other side have an opportunity to explain what this
4 means.

5 I don't know what they were arrested for. It says
6 that 800 people were in prison by the Israeli government. I
7 don't think this document says anything about terrorism.

8 MR. HILL: Then it's not relevant at all and shouldn't
9 come in.

10 THE COURT: Why? I am trying to understand, other
11 than this paragraph.

12 MR. HILL: There are others. I can read them if the
13 Court wants me to.

14 THE COURT: Other than this paragraph, what is the
15 part you don't want before the jury.

16 MR. HILL: On the next page it says at the top, Qarage
17 said --

18 MR. YALOWITZ: May I indulge the Court to ask Mr. Hill
19 to provide me a copy as well as the Court?

20 THE COURT: You don't have a copy of this document?

21 MR. YALOWITZ: Not right in front of me.

22 THE COURT: We are not going to waste time. He'll
23 provide it over lunch. You are saying top paragraph. We can
24 discuss it after lunch.

25 MR. HILL: "Qarage said the military prisoners are

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1 soldiers who were working for different security and police
2 apparatuses."

3 THE COURT: You believe it is prejudicial to refer to
4 the military prisoners as soldiers?

5 MR. HILL: The next sentence: "They were arrested
6 while they were carrying out their duties just to be used as
7 hostages."

8 THE COURT: Okay. And you say that implies what
9 that's prejudicial to the defendant?

10 MR. HILL: The plaintiffs have not told me what they
11 intend to use it for.

12 THE COURT: What is it you say that implies it is
13 prejudicial to you?

14 MR. HILL: I assume they will use it to argue that the
15 people who committed the crimes in this case were carrying out
16 their duties. If they are not going to use it for that, it
17 shouldn't come in.

18 THE COURT: It is your objection. So saying you don't
19 know why they are going to use it isn't a valid objection. You
20 have to tell me why you object to it. If it is only on
21 relevance, that's one standard to use. If it is on some
22 prejudice, I obviously am more concerned about the prejudice
23 than I am about whether or not it has significance or little
24 relevance.

25 MR. HILL: These are political statements by a

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1 politician.

2 THE COURT: Is that the nature of your objection to
3 this document? That it refers to military detainees and people
4 being arrested in uniform? Is that the substance of your
5 objection?

6 MR. HILL: There are other political statements on
7 page 3817 at the bottom and the second paragraph from the
8 bottom. It says: Minister Ajrami demonstrated to the British
9 parliamentary delegation that the Palestinian prisoners are
10 political and security prisoners and not criminals as the media
11 and political machines portray them. They are freedom fighters
12 and patriots in accordance with the laws of the United
13 Nations."

14 THE COURT: Describing them as freedom fighters? Is
15 what you have concerns about?

16 MR. HILL: And patriots.

17 THE COURT: Not patriots.

18 MR. HILL: The plaintiffs are going to argue --

19 THE COURT: Whether they're patriots or not?

20 MR. HILL: This is a statement from 2008. The
21 plaintiffs are going to argue that statement indicates my
22 client views the people who injured the plaintiffs as freedom
23 fighters and patriots. That's going to prejudice me.

24 THE COURT: I understand. That's the kind of thing
25 you are objecting to.

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1 MR. HILL: Those are the sorts of statements I'm
2 objecting to in this document.

3 THE COURT: Mr. Yalowitz, why don't you get a copy
4 from them, we'll talk about it briefly after lunch, and you can
5 tell me exactly what you say this is evidence of and how you
6 expect the jury to utilize this document.

7 MR. YALOWITZ: I've looked at it and I've listened and
8 I can tell you right now.

9 THE COURT: Let me take that.

10 MR. YALOWITZ: I do want to give you for the lunch
11 break, your Honor, 427, which we've tabbed and highlighted.
12 The two paragraphs I described earlier about Abdullah
13 Barghouti.

14 THE COURT: This is the Abdullah Barghouti
15 interrogation.

16 MR. YALOWITZ: You got it.

17 THE COURT: Thank you.

18 MR. ROCHON: Whatever he's highlighted, whatever he's
19 tabbed, we don't have.

20 MR. YALOWITZ: I am going to show it to Mr. Rochon and
21 then I'll hand it up.

22 (Luncheon recess)

23 (Continued on next page)

FlfQsok4

AFTERNOON SESSION

2:00 P.M.

(In open court; jury not present)

THE COURT: Is everybody ready?

MR. YALOWITZ: Plaintiffs are ready, your Honor.

THE COURT: The jurors are here. So let's go ahead and continue unless there is an issue we need to address.

MR. YALOWITZ: Not from the plaintiff's side, your Honor.

THE COURT: Then let's not use the jurors' time. Let's get the jurors in.

(Jury present)

MR. YALOWITZ: Your Honor, before the lunch break, the Court admitted Exhibit 532. I just wanted to hand up a copy for the Court's benefit. May I approach?

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. YALOWITZ:

Q. Mr. Eviatar, we were talking about the Palestinian Authority. If you could just describe for the jury some of the security bodies that are within the PA to implement those security responsibilities, that would be helpful.

A. Yes, of course. I will note the main security agencies of the Palestinian Authority, those who were and still are in charge of implementing the agreement. One is the preventative

FlfQsok4

Eviatar - Direct

1 security apparatus. The second is the general intelligence
2 service. The third is the national security apparatus, the
3 civilian police, Force 17 presidential guard, and there are
4 additional entities and agencies.

5 Q. Does the PA have within it something called a ministry of
6 prisoners and ex-prisoners?

7 A. Yes, of course. The precise definition of this
8 governmental ministry is the ministry of prisoners and released
9 prisoners.

10 Q. Is that within the PA or the PLO?

11 A. That depends on which period we're talking about because
12 until recently, I'm talking about late 2014, the ministry of
13 prisoners and released prisoners was under the full
14 responsibility of the Palestinian Authority, but since the
15 beginning of 2015, just a few days ago, we could say on the
16 background of harsh international criticism of the Palestinian
17 Authority.

18 MR. HILL: Your Honor, may we approach?

19 THE COURT: Do you have an objection to that?

20 MR. HILL: I do.

21 THE COURT: Ladies and gentlemen, you should disregard
22 the last answer.

23 MR. HILL: Thank you.

24 THE COURT: What is specifically your question?

25 Q. Just specifically, Mr. Eviatar, where is that entity today?

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Eviatar - Direct

1 MR. HILL: Objection.

2 THE COURT: No, he can answer that.

3 A. As of today, that entity is subordinate to the Palestine
4 Liberation Organization.

5 Q. Now I want to ask you about something called the martyrs'
6 foundation. Are you familiar with that unit?

7 A. Yes, I'm very familiar with this entity.

8 Q. Why don't we start with where that unit is located within
9 the PA or the PLO?

10 A. This entity was established in 1965 by the PLO, and later
11 upon the establishment of the Palestinian Authority, and the
12 establishment of the Palistinian government, including during
13 the years of the Aqsa Intifada, this group was made subordinate
14 to the Palestinian Authority.

15 After 2005, this entity together with what is in
16 charge of it or who is in charge of it, went back to being
17 subordinate to the PLO. If I may, I can state who heads this
18 entity.

19 Q. Who heads the entity?

20 A. A woman heads this entity. Her name is Intezar al-Wazir.
21 She is known as -- her nom de guerre, as it were, is Omm Jihad.
22 She was a minister in the Palistinian government and in current
23 years she is the head of that entity.

24 Q. Let me ask you a couple of things about -- you used the
25 word omm. Is that an Arabic word, omm?

FlfQsok4

Eviatar - Direct

1 A. Yes, of course. The meaning of that word is mother. It
2 means she is the mother of Jihad. Jihad is the name of her
3 eldest son, and that is how she is known, Omm Jihad.

4 Q. Now, I also want to ask you about the word martyr,
5 foundation for martyrs. What's the Arabic word that they used
6 in that, the title of that entity?

7 A. In the singular the word is shahid. In the plural the word
8 is shuhada. That is the literal translation of the concept of
9 martyr.

10 Q. In the context of the al-aqsa intifada, how was the word
11 martyr being used? How was the word shahid being used?

12 MR. HILL: Objection, your Honor.

13 THE COURT: I'm going to sustain it the form of the
14 question. Be more specific.

15 Q. Could you tell us are there multiple meanings of the word
16 shahid in the Arabic language?

17 A. This is a meaning that is very broad and deep, and it is
18 clear to the Palistinians with whom I was in contact and with
19 whom I spoke. Shahid refers to in the context of the al-aqsa
20 intifada.

21 MR. HILL: Objection.

22 THE COURT: Overruled.

23 Q. You can continue.

24 A. It refers to someone who was killed in the context of the
25 struggle against Israel.

FlfQsok4

Eviatar - Direct

1 Q. Thank you. Does that include somebody who was killed as a
2 suicide terrorist?

3 A. It certainly includes that category. In fact, one might
4 say that it refers specifically to that category.

5 Q. We've talked about the PLO, and we've talked about the
6 Palestinian Authority. I want to now turn to an organization
7 called Fatah. Can you tell the jury, first of all, what does
8 Fatah stand for? What is Fatah?

9 A. Fatah is an acronym in Arabic for three words. Harakat
10 Tahrir Filastini. And that means the movement for the
11 liberation of Palestine. It is a movement that was established
12 in 1959 by Yasser Arafat. Later in 1969, ten years after its
13 establishment, it took over the PLO, which as will be recalled,
14 was established in 1964. This movement espoused since its
15 establishment in its --

16 MR. HILL: Objection, your Honor.

17 THE COURT: Overruled. You can cross-examine on it.

18 A. -- in its written documents that the path or the way to
19 liberate Palestine -- and I would like to note to the members
20 of the jury that when they talk about Palestine, they are
21 referring to the entire territory of Israel -- that the way to
22 free Palestine is by means of an armed struggle.

23 Over the years with the establishment of the
24 Palestinian Authority up to the present date, this movement,
25 which includes tens of thousands of Palistinians as registered

FlfQsok4

Eviatar - Direct

1 members of the movement, some of them carry membership cards.
2 I've seen them with my own eyes. These tens of thousands of
3 members of Fatah represented and continue to represent the main
4 infrastructure of the Palestinian Authority; in other words,
5 the military apparatuses as I mentioned earlier, the
6 governmental ministries, other governmental entities and
7 agencies, are based on those tens of thousands of Fatah
8 members.

9 This movement, in essence, represents, as I would put
10 it, the central framework of the Palestinian Authority.

11 Q. Let's talk about what Fatah is on paper. Is it a
12 corporation?

13 A. No, not at all.

14 Q. Is it like an LLC or a charity or something like that?

15 A. Not at all.

16 Q. Is it a political committee that raises money and files
17 reports on elections?

18 A. Not at all.

19 Q. Do they have a budget that they publish so that people
20 could know how much money they spend?

21 A. They do not. I throughout my years looked for such a
22 document, but was unable to find it.

23 Q. Do they have subparts, you know, different functions that
24 they engage in?

25 A. Within the Fatah movement?

FlfQsok4

Eviatar - Direct

1 Q. Yes, sir.

2 A. The Fatah movement is divided up, and this is something
3 that it has made public into various departments and committees
4 that deal with different areas. The main areas that these
5 committees deal with are related to the struggle against
6 Israel.

7 Q. Are these departments and committees and subcommittees, are
8 they corporations?

9 A. No.

10 Q. Are they registered anywhere as separate entities with a
11 separate corporate existence?

12 A. No, they are all part of the same framework.

13 Q. Is that structure of different subunits, is that published
14 anywhere? Can you go to like a Fatah website and see what
15 their organizational chart looks like?

16 A. Yes. These structures as I have mentioned, the committees
17 and so on, can be seen on various websites as to what the Fatah
18 looks like.

19 Q. Are they all put together in one place so that one person
20 could see it if they were curious?

21 A. You can find a list of the various committees. When Fatah
22 is interested in making things public, it does. Then you can
23 find on a single list the breakdown of the various committees
24 that I mentioned.

25 Q. Does Fatah have a military unit?

FlfQsok4

Eviatar - Direct

1 MR. HILL: Objection.

2 THE COURT: Overruled.

3 A. The Fatah has a military branch.

4 Q. What's the called?

5 A. The military branch of the Fatah is called the Al-Aqsa
6 Martyrs' Brigade.

7 Q. Who was the commander of Fatah during the years 2002 to
8 2004?

9 MR. HILL: Objection.

10 THE COURT: Overruled.

11 A. Up until November 11, 2004, the person who headed the Fatah
12 movement, he's also called the commander of the Fatah movement,
13 was Yasser Arafat.

14 Q. Now, are you familiar with the Fatah constitution? I think
15 I may have asked that.

16 A. I'm familiar with the Fatah constitution. It was published
17 by the movement itself.

18 Q. Would you tell the jury what Article 19 talks about?

19 MR. HILL: May we approach?

20 THE COURT: Come on up.

21 (Continued on next page)

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FlfQsok4

Eviatar - Direct

(At the sidebar)

THE COURT: Yes, sir.

MR. HILL: My objection is that the pending question calls for the witness to relate the content of a document that is not in evidence, and that he should not be allowed to do so.

MR. YALOWITZ: I'm not offering the document. I'm just asking for his knowledge.

THE COURT: You're not going to offer the document?

MR. YALOWITZ: I'm not going to offer the document.

THE COURT: What is he going to say?

MR. YALOWITZ: He's going to say it's committed to the armed struggle against Israel.

MR. HILL: In that case, it is also unduly prejudicial against my clients. Fatah is not on trial here, and there's no reason for the jury to hear about the content of a document that is not going to be in admitted.

THE COURT: What is the wording exactly of the "article"?

MR. YALOWITZ: You will remember. I don't, but --

THE COURT: Can I see it?

MR. YALOWITZ: We can get it for your Honor.

THE COURT: You want to ask him this to prove what?

MR. YALOWITZ: Part of our theory of the case is that Fatah Al-Aqsa Martyr Brigades were one entity, and that the PLO, PA and Fatah were all controlled by Yasser Arafat, and he

FlfQsok4

Eviatar - Direct

1 used Fatah when he wanted to commit acts of terror. This tends
2 to make it more likely that it's true when the written
3 constitution that all the Fatah members know about it calls for
4 armed struggle against Israel.

5 THE COURT: Well, that doesn't necessarily translate
6 into terrorism.

7 MR. YALOWITZ: That is certainly true. They can argue
8 that --

9 THE COURT: So you want to refer to it because they
10 say -- and I don't know what the language is, but the Article
11 19 says that they're dedicated to armed struggle against whom?

12 MR. YALOWITZ: Israel for the liberation of Palestine.

13 THE COURT: And you say that that's supposed to be
14 evidence that they're committed to killing innocent civilians?

15 MR. YALOWITZ: I'm saying that's a reasonable
16 inference the jury can draw.

17 THE COURT: I'm not going to let the jury draw that.
18 If you want to show me the document, I'll look at the document.

19 MR. YALOWITZ: No, your Honor has made a ruling. I
20 don't think their language is going to matter.

21 MR. HILL: I just want to be clear. I've preserved my
22 objections to the witness' testimony. So I don't need to
23 object to him identifying people as factual matters at this
24 point, do I?

25 THE COURT: My attitude to most of your objections

FlfQsok4

Eviatar - Direct

1 were you're going to be cross-examining him and you think he's
2 wrong, or you can bring in your own expert to say something
3 different. It seems to me most of the areas so far that you've
4 objected to are perfectly within his expertise to explain:
5 What Fatah is, where they are, what the website is. If you
6 disagree with that, then bring in somebody who says he didn't
7 know what he's talking about.

8 MR. HILL: I understand. I just want to be sure the
9 record is preserved.

10 Thank you, your Honor.

11 (Continued on next page)

FlfQsok4

Eviatar - Direct

1 (In open court)

2 THE COURT: The objection is sustained.

3 Why don't you move on to something else?

4 MR. YALOWITZ: What I would like to do now is to offer
5 into evidence, your Honor, a chart that the witness prepared
6 which was in his expert report?

7 THE COURT: Give me the exhibit number.

8 MR. YALOWITZ: I think we're going to have to mark it
9 for identification as 1152.

10 THE COURT: Have him identify it and tell us what it
11 is, and if the Court admits it, I will consider it.

12 MR. HILL: I don't have a copy of it at all.

13 MR. YALOWITZ: Why don't we block the screen and we
14 could put it up?

15 THE COURT: Do you have a copy for them?

16 MR. YALOWITZ: It's on page 20 of his expert report,
17 your Honor.

18 THE COURT: They just want to know where it is so they
19 could follow it from there. Just show them and have it ready.

20 Did you find it, Mr. Hill?

21 MR. YALOWITZ: They have it.

22 Just one clarification, your Honor. There are some
23 Hebrew language which we've removed from the exhibit that we're
24 going to show the jury. I don't think anybody reads Hebrew,
25 but, anyway, we took it out.

FlfQsok4

Eviatar - Direct

1 THE COURT: Yes.

2 Mr. Hill?

3 MR. HILL: May we approach?

4 THE COURT: Do you have an objection to this document?

5 MR. HILL: I do, your Honor.

6 THE COURT: Come up.

7 (Continued on next page)

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FlfQsok4

Eviatar - Direct

1 (At the sidebar)

2 THE COURT: What's the nature of the objection?

3 MR. HILL: As I understand it, this is the document.

4 MR. YALOWITZ: Right.

5 MR. HILL: So I object that it's misleading and unduly
6 prejudicial to my clients.

7 THE COURT: You mean just this little portion here?
8 Just this little portion here with the picture of Yasser Arafat
9 at the top? And I assume that one is the PLO, one is the PA
10 and one is Fatah?

11 MR. YALOWITZ: You got it.

12 THE COURT: I'm not as dumb as I look.

13 MR. YALOWITZ: That's my line. I say that all the
14 time.

15 THE COURT: And your objection is?

16 MR. HILL: It's unduly prejudicial to my client.
17 Fatah is not on trial here.

18 THE COURT: Well, neither is Yasser Arafat, but that
19 doesn't make it prejudicial to your client. What's so
20 prejudicial about it? Saying he's the head of these three
21 organizations, there's something prejudicial about that?
22 That's not true?

23 MR. HILL: That he wasn't the head?

24 THE COURT: Yes.

25 MR. HILL: He was the head, yes. But to put it up on a

FlfQsok4

Eviatar - Direct

1 graphic is prejudicial. That's my motion.

2 THE COURT: It's overruled. Before you put it up,
3 have the witness explain to us what we're getting ready to see
4 and then you can offer it into evidence and have it admitted
5 into evidence.

6 (Continued on next page)

FlfQsok4

Eviatar - Direct

1 (In open court)

2 MR. YALOWITZ: We have a high technology system here,
3 your Honor. What we've done is put a big binder in front of
4 the projector.

5 THE COURT: I see. Let's move on. Does he have a
6 copy in front of him?

7 MR. YALOWITZ: He should have it on the screen.

8 Q. Mr. Eviatar, do you have a little chart showing Yasser
9 Arafat and some other symbols?

10 A. That's before me, yes.

11 Q. Could you just explain what's at the top of the chart?

12 THE COURT: Just give us in general what it's supposed
13 to be.

14 BY MR. YALOWITZ:

15 Q. In general, what is the chart supposed to show?

16 A. This diagram clearly shows the hierarchal control of Arafat
17 over three Palistinian entities. The first one is the
18 Palestine Liberation Organization. The second one is the
19 Palestinian Authority. And the authorized one is the Palestine
20 Liberation Movement, the Fatah. This diagram also continuously
21 shows the relationship between the three entities. All of them
22 are under Yasser Arafat. And I would like to add that each
23 entity is represented here by its symbol.

24 THE COURT: You offer this exhibit in evidence?

25 MR. YALOWITZ: Yes, sir.

FlfQsok4

Eviatar - Direct

1 THE COURT: It will be admitted into evidence. You
2 may now display it.

3 MR. YALOWITZ: Thank you.

4 (Plaintiff's Exhibit 1152 received in evidence)

5 Q. I would like you, Mr. Eviatar, to explain some of the
6 symbols that we see here. If we could actually begin with some
7 of the symbols that we see in chairman Arafat's photograph,
8 that would be great.

9 THE WITNESS: Thank you to the Honorable Court for
10 assisting me with the technology.

11 THE COURT: Batteries would help.

12 THE WITNESS: In the meantime, I'll make due.

13 A. The first symbol that we see is the official symbol of the
14 PLO name. Here I'm finally successful. This flag is the
15 Palistinian flag, and what we see here that I'm marking in red
16 is the map of Palestine which includes the entire territory of
17 the state of Israel as we saw previously.

18 Q. And this is the official symbol of the PLO?

19 A. Of course.

20 Q. Anything else on that shield that you want to draw the
21 jury's attention to?

22 A. Just a moment, please. It says, of course, I don't know
23 whether the members of the jury can see it, but it says here
24 the PLO name.

25 Q. Now, looking at the second symbol, the middle one, whose

FlfQsok4

Eviatar - Direct

1 symbol is that?

2 A. This symbol belongs to the Fatah.

3 Q. Just describe what you are pointing at right there and
4 explain that to the jury.

5 A. In Arabic, it says the word Fatah here. And we see here
6 hands that are diagonally grasping two rifles.

7 Q. Two rifles?

8 A. Two rifles, and facing them on the diagonal. I think that
9 we can also identify here a hand grenade underneath them.

10 Q. A hand grenade?

11 A. Yes, a hand grenade. I will further add that in Arabic
12 what it says here behind the rifles is the word in Arabic
13 al-asefa. The translation into Hebrew would be the storm. And
14 the meaning of that term, that's one of the military forces
15 that was under the control of the Fatah in previous years.

16 Q. Take us to the third symbol, that eagle. That looks
17 familiar to me.

18 A. This eagle is the official symbol of the Palestinian
19 Authority. It appears in the official documents of the
20 Palestinian Authority, in other official exhibits of the
21 Palestinian Authority. Underneath it says here in Arabic,
22 Palestine.

23 Q. Thank you. Now, could you also tell us, are there some
24 symbols in the way Yasser Arafat appears in that photograph?

25 A. Yasser Arafat always wore an Arab national headdress, I

FlfQsok4

Eviatar - Direct

1 would call it. In Arabic it's called a kafia. Now, I would
2 say that Arafat had a special way of wearing that headdress on
3 his head, as I'm marking here above. The kafia took on the
4 form of a kind of triangle on his head but you have to pay
5 special attention to make sure that it appears like such a
6 triangle. And Palistinians told me when I asked them about it,
7 they explained the triangle to me, and they told me that that's
8 the way that Arafat symbolizes the map of the entire country of
9 Palestine in their language, in their parlance.

10 Q. How is a kafia normally worn on the head?

11 A. It's usually placed on the head kind of like a scarf, and
12 it's just tied with that black cord in front. It's placed on
13 the head. It doesn't stand that way --

14 MR. ROCHON: Objection, your Honor.

15 THE COURT: Sustained.

16 Q. Let's go to the uniform that Yasser Arafat is wearing. Can
17 you describe the significance of appearing in uniform.

18 MR. ROCHON: Objection. Calls for speculation.

19 THE COURT: Overruled. He can answer the question.

20 A. In all of his appearances, Arafat -- and I've seen many
21 hundreds of appearances by Arafat in the media -- Arafat always
22 appeared in a military outfit with medals and emblems on the
23 uniform, and that was the regular appearance of Yasser Arafat
24 up until, we could say, the day of his death.

25 MR. YALOWITZ: Your Honor, may I have the Court's

FlfQsok4

Eviatar - Direct

1 permission to hand a copy of Exhibit 1152 so members of the
2 jury can pass it around amongst themselves?

3 THE COURT: Sure.

4 MR. YALOWITZ: Thank you so much.

5 Q. Now, while the members of the jury are looking at that, I
6 will ask the witness whether you are familiar with a directory
7 published by a group called POSCI (ph)?

8 A. I'm quite familiar with it. This is a Palistinian research
9 institute that publishes professional publications in the
10 fields of political science, history, politics. The name of
11 that institute is POSCI.

12 Q. During the years 2002 to 2004, did POSCI publish a
13 directory of PA and PLO official and their offices, telephone
14 numbers, addresses?

15 A. The answer to that is yes. It's a thick directory which I
16 kept in my office as a work tool.

17 Q. Did you find it to be a reliable reference tool during your
18 years in the government service?

19 A. Absolutely. I made use of it.

20 MR. YALOWITZ: Your Honor, plaintiff's offer in
21 evidence Exhibit 171, which is a directory of POSCI published
22 in 2004. We actually received it from the defendants.

23 MR. HILL: May we approach?

24 THE COURT: Yes.

25 (Continued on next page)

FlfQsok4

Eviatar - Direct

(At the sidebar)

MR. ROCHON: Judge, I will tell you what: If Mr. Yalowitz says again both in the presence of the jury or break out a document without getting it from a witness --

THE COURT: I will admonish him in front of the jury.

MR. ROCHON: Thank you.

MR. YALOWITZ: I understand.

THE COURT: Mr. Yalowitz cut out the comments, period. You are here to ask questions. All I want to hear from the lawyers are questions to the witness.

MR. YALOWITZ: Yes, sir.

THE COURT: Do you have an objection?

MR. ROCHON: That's the main objection. We're afraid they're going to use this to say someone is a member of an organization based on --

THE COURT: No, they're going to say there's a directory and there's names in it.

MR. HILL: As long as it's not being offered for its truth.

THE COURT: I don't know. The truth of what?

MR. YALOWITZ: It is being offered for the truth, yes.

THE COURT: The truth that they're in the directory? If you want to dispute that, you can.

(Continued on next page)

FlfQsok4

Eviatar - Direct

1 (In open court)

2 THE COURT: It will be admitted.

3 MR. YALOWITZ: Thank you, your Honor.

4 (Plaintiff's Exhibit 171 received in evidence)

5 MR. ROCHON: Your Honor, on the other point?

6 THE COURT: I said next time.

7 MR. ROCHON: I'm sorry, I misunderstood.

8 BY MR. YALOWITZ:

9 Q. Now, can we look at the first page of the POSCI directory:
10 I'm sorry, the first page with entries in it, which I think is
11 page 3 of our PDF. I just want you to identify who is listed
12 as the chairman of the PLO in this directory.

13 A. On the top left underneath the designation PLO, Palestine
14 Liberation Organization, it says chairman: Yasser Arafat.

15 Q. Then it lists his telephone numbers, fax number and so
16 forth?

17 A. Yes, these are his telephone numbers.

18 Q. Let's just look on the part of the directory that deals
19 with the Palestinian Authority. Let's see if we can spot the
20 president. Is that Yasser Arafat as well?

21 A. Yes, this too is Yasser Arafat.

22 Q. Thank you.

23 Now, I would like to ask you about the relationship
24 between Fatah and the PLO. Is it possible to be a member of
25 the PLO without -- let me ask it a different way.

FlfQsok4

Eviatar - Direct

1 If you're a member of Fatah, are you automatically a
2 member of the PLO?

3 A. The answer is yes.

4 Q. Now, we talked about Yasser Arafat. Were there other
5 individuals who had offices not only in the PA but in the
6 Fatah?

7 A. Yes, there are many such people who have functions in the
8 Palestinian Authority and are official members of Fatah
9 including among the leadership.

10 Q. Can you give the jury some examples of who those
11 individuals were during the '02 to '04 time period?

12 A. I will give you a few examples. For example, Marwan
13 Barghouti. Marwan Barghouti served as a member of the
14 Palistinian Legislative Council which is the parliament, and at
15 the same time, he served as a leader of Fatah in the West Bank.

16 Q. Who paid Marwan Barghouti's salary?

17 A. His salary was paid by the Palestinian Authority.

18 Q. Now, in addition to Marwan Barghouti, are there others you
19 have in mind that had that overlap?

20 A. Yes, I can give you additional examples.

21 Q. Please go ahead.

22 A. For example, Dr. Saeb Erekat. He is both a senior member
23 of the Fatah leadership. He is both a senior member of the
24 leadership of Fatah and he was also the governor of the Jericho
25 region under the Palestinian Authority.

FlfQsok4

Eviatar - Direct

1 Q. Were there individuals involved in the security apparatus
2 who were both Fatah and PA leaders?

3 A. Yes, definitely. The heads of the Palistinian security
4 apparatuses in the West Bank were under the authority of the
5 Palestinian Authority and also served as members of Fatah,
6 including among the leadership of the movement, and some also
7 served later or at the same time in leadership positions
8 subordinate to the president.

9 Q. Could you give us some examples of particular individuals?

10 A. Yes, I will give you some examples. For example, the head
11 of the preventative security apparatus in the West Bank. His
12 name is Jabril Rajoub. Beyond being the head of that
13 apparatus, he is also a member of Fatah. And he also served as
14 a security adviser to the president.

15 I will give you another example: Muhammad Dahlan. A
16 member of the Fatah leadership. And he served until the year
17 2001 or perhaps 2002, I have to check it, as the head of the
18 preventative security apparatus in the Gaza Strip, and he too
19 served as a presidential security adviser, and also a
20 high-ranking minister in the Palestinian Authority.

21 Q. Have you had occasion to meet any of these individuals?

22 A. The truth is that I have met most of them personally. Just
23 from among the names that I mentioned earlier, I can note that
24 I met Jabril Rajoub, I met Marwan Barghouti, and I met Muhammad
25 Dahlan a number of times. I met a number of other individuals.

FlfQsok4

Eviatar - Direct

1 Someone whose name I didn't mention earlier whose name is
2 Al-Sheikh. He too is a senior member of the entities that I
3 mentioned earlier.

4 I met someone whose name came up and the jury has
5 already heard of the head of the ministry of prisoners and
6 released prisoners. His name is Issa Karaka. I also met him
7 personally. And there are many others.

8 Q. Let me just ask you a couple of questions about some of
9 those individuals. Where did you meet Marwan Barghouti?

10 A. I met Marwan Barghouti when he was, and he still is, a
11 prisoner in an Israeli jail. We held what could be called a
12 personal conversation.

13 Q. And on what occasion or occasions did you meet Jibril
14 Rajoub?

15 A. I met Jabril Rajoub when I was serving in the Gaza Strip
16 at a place that is a control point where Palistinians moved
17 from the Gaza Strip into Israel and also on the Allenby Bridge,
18 which is a bridge that connects the West Bank with Jordan.
19 Jabril Rajoub passed over the bridge. It's a kind of a
20 terminal when I was responsible for that district.

21 Q. Did he give you anything when you met him?

22 A. Yes. I received from Jabril Rajoub his personal visiting
23 card, and I gave him mine, as I usually do with every senior
24 Palistinian with whom I meet.

25 MR. YALOWITZ: Your Honor, plaintiffs offer in

FlfQsok4

Eviatar - Direct

1 evidence Exhibit 1127. It's a copy of Jabril Rajoub's card.

2 THE COURT: Let's do it a different way. Why don't
3 you take the exhibit, show it to the witness, let the witness
4 identify what it is.

5 MR. YALOWITZ: Yes, sir. We will do that. My
6 apologies to the jury and counsel, your Honor. Thank you, your
7 Honor.

8 Let's show, as Judge Daniels instructed, the witness
9 1127 for identification.

10 Do you have 1127 before you?

11 A. Yes, it is.

12 Q. What is it?

13 A. I see the side which is written in Arabic of the card. The
14 heading at the top says -- in other words, the organization for
15 the liberation of Palestine.

16 THE COURT: Why don't you tell us what this is? What
17 is a picture of this that is drawn?

18 THE WITNESS: This card shows the personal details of
19 Jabril Rajoub, the organizations to which he is subordinate,
20 which is the PLO and the Palestine Authority, one under the
21 other.

22 BY MR. YALOWITZ:

23 Q. Let me just interrupt you there, Mr. Eviatar. Just very
24 generally, what is this document?

25 A. This is Jabril Rajoub's official business card.

FlfQsok4

Eviatar - Direct

1 MR. YALOWITZ: Your Honor, plaintiffs offer 1127 into
2 evidence.

3 THE COURT: It's admitted in evidence.

4 (Plaintiff's Exhibit 1127 received in evidence)

5 MR. YALOWITZ: All right. Now, if you could finally
6 put the English on.

7 Ms. Machnes, can we put the English up for the jury?

8 Q. Is the business card one of those cards where the one side
9 is in one language and the other side is in another language?

10 A. Yes.

11 Q. So if you look at one side, you see Arabic. And what do
12 you see as you look at the other side?

13 A. The other side is English.

14 Q. Is that what we're looking at here?

15 A. Exactly, this is the exact translation.

16 Q. Mr. Rajoub is listed as -- just describe those two entities
17 at the top that we're looking at.

18 A. At the top, it says the Palestine Liberation Organization,
19 PLO, which is the upper or superior organization. Underneath
20 it in hierarchy, it says the Palistinian National Authority,
21 which is the Palestinian Authority, and it is the entity that
22 is subordinate to the PLO in the hierarchy. And at the end, we
23 see Jabril Rajoub's function, national security adviser.

24 Q. What does that little mark there in entail?

25 A. On the right side, the digit 9 has been written in Jabril

FlfQsok4

Eviatar - Direct

1 Rajoub's handwriting. And this is the full area code of the
2 Palistinian cell lab network.

3 Q. Who wrote that in?

4 A. Jabril Rahjoub.

5 Q. Have you had occasion to look at payment records flowing
6 from the Palestinian Authority to Fatah?

7 A. Yes, I've seen many examples of that.

8 MR. YALOWITZ: Your Honor, plaintiff's offer Exhibit
9 935 into evidence.

10 MR. ROCHON: Objection, Judge.

11 THE COURT: Not before you show it to the witness and
12 ask the witness tell us what this is supposed to be?

13 MR. YALOWITZ: May I approach?

14 THE COURT: We are going to take a break, ladies and
15 gentlemen. We are going to figure out a more efficient system.

16 Don't discuss the case, and keep an open mind.

17 (Jury excused)

18 (Continued on next page)

Flf3sok5

1 THE COURT: Mr. Yalowitz, you say you don't like to be
2 interrupted. You're less likely to be interrupted if you take
3 the exhibit, walk up to the witness, ask the witness to
4 identify the exhibit, tell us what it is, and then lay the
5 proper foundation for me to simply say it is what it is.

6 You're sort of doing it backwards. You're throwing
7 out an exhibit number, which I have no idea what the exhibit
8 is, and you're telling me to admit it into evidence, and
9 they're popping up like a jack in the box to object.

10 MR. YALOWITZ: I'm not going to control the popping up
11 like the jack in the box.

12 Let me just say, I heard yesterday a really smart
13 thing, which is good decisions are made by informed people, not
14 smart people. And I processed the fact that the witness has
15 the documents in a binder before him. So I'm going to do it
16 that way now.

17 THE COURT: Go through the binder. Put in the next
18 exhibit. Say I'm showing you exhibit X. Tell us what that is
19 in general. Let him identify it. If he wants to say a little
20 bit how he knows what it is. And you can offer it in evidence.
21 If they have some objection, they can let me know.

22 MR. YALOWITZ: 958 is not -- this particular document
23 is responses to a document request by the defendants.

24 THE COURT: All right.

25 MR. YALOWITZ: And then the documents are attached.

Flf3sok5

1 THE COURT: Do we need that?

2 MR. YALOWITZ: Well, I only need it if they're going
3 to fight me on the foundation of the documents which --

4 THE COURT: You are going to object to the
5 admissibility of the evidence?

6 MR. ROCHON: Relevance and other objections have been
7 overruled.

8 THE COURT: Are you going to object?

9 MR. ROCHON: No, I think it is already preserved. The
10 reason to object, your Honor, is two fold. Number one, because
11 it has got the cover of the document from us on it. Language
12 with all the general preliminary objections and all that.

13 THE COURT: You can eliminate that by simply not
14 objecting to the document and tearing that off and let's go
15 forward.

16 MR. ROCHON: Right, that's fine. The other reason to
17 stand up is how this works is they show it to defense counsel,
18 may I approach the witness, show it to the witness, ask the
19 witness what it is. The witness does enough to move it,
20 describe it, then he moves it. And that's how it's been done
21 for -- he's been a lawyer for 25 years. I've been a lawyer for
22 33 years. It's been that way since we both started. Those
23 rules make the trial not only move more smoothly, it has the
24 witness testifying instead of counsel.

25 THE COURT: That's what I thought I just said.

Flf3sok5

1 MR. ROCHON: I agree with you so much here. I'll sit
2 down.

3 THE COURT: You are going to lose your jurors'
4 attention if you keep stumbling back and forth. Let's go
5 smoothly through the exhibits, put them out there, make sure we
6 know the objection. We'll have fewer and fewer sidebars.
7 We're wasting a lot of time. If you have a legitimate
8 objection to articulate, then you better let me know now so we
9 don't have to go up every single exhibit. I am going to stop
10 hearing you.

11 I am going to hear what he says about the document,
12 I'll know what the document is, and I am going to rule. You
13 can make your arguments at the end of the day. Write down a
14 list of all the objections you have, and you can make your
15 record as to why it shouldn't go in.

16 I am not going to use their time waiting for us at the
17 sidebar and have them cooling their heels sitting in the box.
18 Make sure it's important if you want to come up.

19 MR. ROCHON: We'll work out how to deal with this
20 exhibit.

21 THE COURT: I want you to work out how to deal with
22 the next 10 exhibits. Let's take a break.

23 (Recess)

24 MR. YALOWITZ: Your Honor, we're not going to get to
25 them today. But, on 451 and 889, those are the convictions of

Flf3sok5

1 Marwan Barghouti and Fuad Shawbaki where there is a dispute
2 about the redactions.

3 I have two issues. One is I'd like to give the Court
4 a completely unredacted copy of both of those documents because
5 I think we will get to them tomorrow. That's the first thing.
6 The second thing is, it is my view that because of two facts,
7 we don't think there should be any redactions on those
8 documents. So we have a dispute that we need the Court to
9 resolve.

10 The two facts in my view that matter are, number one,
11 these were findings by a court after a full trial. And number
12 two, that these are both individuals who were indisputably
13 direct reports to Yasser Arafat. There is no dispute about
14 that.

15 THE COURT: I'm not sure what rule of law that's
16 supposed to be.

17 MR. YALOWITZ: So, when a court makes a finding that
18 Fuad Shawbaki received orders from Yasser Arafat to gather all
19 the weapons in Gaza and the West Bank, there is nobody trying
20 to inculcate Yasser Arafat. That's a finding that goes to
21 whether Fuad Shawbaki's guilty of illegal trading in weapons.

22 So, the fact that we could say an individual told him
23 to do that and then an expert can make the link who was his
24 boss. But it just seems to me that the Court's prior ruling
25 with regard to inculpatory statements doesn't apply to those

Flf3sok5

1 two documents.

2 So, we have another dispute. The defendants want even
3 more redacted than what we proposed based on that Yasser Arafat
4 ruling. We, having looked at it, it really is my view that
5 those two documents are of a different character.

6 THE COURT: When will we have an opportunity to review
7 it?

8 MR. YALOWITZ: I believe we have copies unredacted we
9 can give to the Court.

10 THE COURT: Is there any way I'm supposed to know what
11 I'm looking for?

12 MR. YALOWITZ: The defendants have highlighted, I
13 think the defendants have a highlighted copy of what they're
14 looking to have redacted, and so they can provide that to the
15 Court.

16 THE COURT: That's the part that's at issue?

17 MR. YALOWITZ: No, it is beyond that, because in our
18 haste to deal with the redaction issue the night before trial,
19 we did have somebody on our team go through and redact Yasser
20 Arafat's name everywhere we could find it.

21 THE COURT: So now you want to unredact it.

22 MR. YALOWITZ: I certainly do, before I offer it in
23 evidence.

24 THE COURT: Am I just looking for references of Yasser
25 Arafat?

Flf3sok5

1 MR. YALOWITZ: There are other things the defendants
2 want.

3 THE COURT: Is there something I can look at while
4 we're doing this witness?

5 MR. ROCHON: I think we have a set here.

6 THE COURT: If you can give me the unredacted and what
7 you want redacted, I can look at that.

8 MR. ROCHON: I have to make sure we have another copy
9 of it.

10 THE COURT: I'll give it back to you.

11 MR. ROCHON: If it is okay with the Court, I'll
12 approach. Just make 100 percent sure we didn't mark anything
13 on these.

14 Actually, this is redacted. I'm very sorry, your
15 Honor.

16 THE COURT: I just want to know what your additional
17 redactions are. I assume you want the redactions and
18 additional redactions.

19 MR. ROCHON: Right. We provided that to the
20 plaintiffs for Shawbaki.

21 MR. HILL: We have the additional redactions for
22 Shawbaki. We did not get through the 173 pages of Marwan
23 Barghouti yet.

24 THE COURT: Let me look at those two.

25 MR. ROCHON: We've tendered Shawbaki. And the

F1f3sok5

1 plaintiffs are tendering?

2 MR. YALOWITZ: Shawbaki.

3 MR. ROCHON: These are very different, your Honor.
4 These two guys are very different. Not the redactions.

5 THE COURT: I am going to look at it.

6 MR. ROCHON: So Mr. Yalowitz is saying they think they
7 redacted too much. We think they didn't redact enough. As we
8 read through these, there also becomes a question what is this
9 coming in to prove. That goes to the redactions tomorrow when
10 we talk about it or tonight when we talk about it. We'll get
11 to that as well.

12 THE COURT: Let me see if I can get through it so we
13 can talk about it today. Let's get the jury in and let's get
14 to it.

15 (Continued on next page)

Flf3sok5

Eviatar - direct

1 (Jury present)

2 BY MR. YALOWITZ:

3 Q. Mr. Eviatar, do you have a binder of documents on the
4 witness stand there with you?

5 A. Yes.

6 Q. Could you turn to Exhibit 958 in your binder.

7 A. I have the exhibit before me.

8 Q. Could you turn past the first few pages to the attachment.

9 A. Yes, I see it.

10 Q. Can you identify this document generally, explain what it
11 is in a very general way.

12 A. There is a document here which indicates the transfer of
13 funds from the Palestinian Ministry of Finance, in other words
14 the Palestinian Authority, to the Fatah movement in Bethlehem.
15 The total of the transfer of funds --

16 Q. Mr. Eviatar, just very general description of it.

17 A. That's all. Thank you.

18 MR. YALOWITZ: Your Honor, pursuant to an agreement
19 with Mr. Rochon, we'd like to offer in evidence Exhibit 958
20 without the lead-in pages that we've discussed.

21 MR. ROCHON: That's right.

22 THE COURT: It is admitted into evidence.

23 (Plaintiff's Exhibit 958 received in evidence)

24 MR. YALOWITZ: Let's place it before the jury.

25 Q. Describe a little bit further what it is we're looking at.

Flf3sok5

Eviatar - direct

1 Please, go ahead.

2 A. On the upper-left-hand corner we see, we see the words
3 "Ministry of Finance of Palestine." And we see here a transfer
4 of funds under the heading in the middle to the Fatah movement
5 in the government of Ramallah. The transfer of funds is in the
6 amount of 35,000 shekels on the dates December 31, 2000, to
7 January 1st, 2000.

8 Excuse me. The other way around.

9 Q. As you page through the document, do you see other
10 transfers to Fatah?

11 A. Yes, I see additional transfers.

12 Q. Could you just tell the jury what page of the -- there is a
13 stamp down at the bottom. What page are we looking at here?

14 A. 654.

15 Q. Are you looking at the English or the Arabic?

16 A. (In English) The English one.

17 Q. All right. How much is being transferred there?

18 A. Just a moment, please. I don't see the amount on this
19 page. But two pages later, on the document ending with the
20 number 656, I see an amount.

21 Q. Let's see if we can put that one up so we can look at it
22 with you. How much of the transfer is that to Fatah?

23 A. The amount of the transfer to the Fatah was 252,000
24 shekels, and on the right-hand column we see 273,000 shekels.

25 Q. Can we look at together at page 673.

Flf3sok5

Eviatar - direct

1 A. I see it.

2 Q. Let's get that one up on the screen so we can look at it
3 together. I have a couple of questions about it.

4 How much is being transferred there?

5 A. The transfer to the Fatah in Ramallah is 35,000 shekels.

6 Q. What does it say it's for?

7 A. The translation into English there is election costs.

8 Q. Was there an election in the Palestinian Authority in the
9 year 2000?

10 A. No.

11 Q. Let's go to page 676. What have we got here?

12 A. We see a transfer of funds, Fatah movement in the West Bank
13 during the course of the year 2000. Total of 21,000 shekels.
14 And it says here that this is a monthly transfer.

15 Q. Let's go to page 678. What have we got here?

16 A. A transfer of funds from the Palestinian Ministry of
17 Finance to the Fatah movement in the governorate of Nablus.
18 The transfer here is in the amount of 35,000 shekels.

19 Q. Let's go to 679.

20 A. We see here a transfer of funds from the same Palestinian
21 Ministry of Finance to the Fatah movement in the governorate of
22 Hebron in the amount of 63,500 shekels.

23 Q. Let's go to 680.

24 A. What we see here is a transfer from the Palestinian
25 Ministry of Finance to the Fatah movement, it says here in Beit

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Eviatar - direct

1 Fajar, that's a village near Bethlehem, in the amount of 10,500
2 shekels.

3 Q. Let's go to 681.

4 A. We see here a transfer of funds from the Palestinian
5 Ministry of Finance to the Fatah movement in the area of
6 Karabsha in the amount of 14,000 shekels.

7 Q. Let's go to 682.

8 A. We see here a transfer of funds from the Palestinian
9 Ministry of Finance to the Fatah movement in an area that's
10 called Sawahra, which is not far from Jerusalem, in the amount
11 of 17,820 shekels.

12 Q. Let's go to 683.

13 A. It is a transfer of funds from the same Palestinian
14 Ministry of Finance, to the Palestine -- to the Fatah movement
15 in Birzeit in the amount of 13,500 shekel.

16 Q. I'm sorry, what was that number? I want to make sure we
17 have it right.

18 A. 3,500 shekel.

19 Q. Thank you. And let's go to 684.

20 A. 684 is a transfer of funds from the Palestinian Ministry of
21 Finance to the Fatah movement, the translation of what's
22 written here in English is The Old City, in the amount of
23 10,500 shekel.

24 Q. Thank you.

25 Mr. Eviatar, I'd like you to turn in your binder to

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Eviatar - direct

1 Exhibit 173.

2 A. I see it.

3 Q. Have you had an opportunity to look at that document
4 before?

5 A. Yes, I have seen it.

6 Q. Generally, what does it reflect?

7 A. The document reflects transfers of funds to the Fatah
8 movement in various districts in the West Bank, for various
9 amounts of money, for the period of time in January 2000 up
10 until February 2002.

11 MR. YALOWITZ: Your Honor, I move Exhibit 173 in
12 evidence pursuant to an agreement with Mr. Rochon.

13 THE COURT: It will be admitted.

14 MR. ROCHON: Pursuant to that agreement, we agree this
15 document was produced by the Palestinian Authority.

16 THE COURT: It will be admitted into evidence.

17 (Plaintiff's Exhibit 173 received in evidence)

18 MR. YALOWITZ: Thank you, Mr. Rochon, and thank you,
19 your Honor.

20 Q. Why don't we take a look at 173. Can you describe for the
21 jury what we have in Exhibit 173.

22 A. We see here in the heading of the document the name of the
23 Fatah movement, and under that, the date on which each of the
24 transfers of funds was carried out. And there is itemization,
25 each line here itemizes the amount of money that was

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Eviatar - direct

1 transferred to each one of the Fatah movements, whether on the
2 West Bank or within the West Bank.

3 Q. Do we have a total of the sum of the various amounts that
4 we're talking about?

5 A. For example, the Fatah movement in the West Bank in its
6 entirety, I'm talking here about the entire West Bank, received
7 the amount of 294,000 shekel during the course of the period,
8 we could say throughout 2001, most of that period of time. We
9 see here additional transfers of funds as well. For example,
10 the governorate of Bethlehem, the Fatah movement in that
11 governorate received the amount of 70,631 shekels.

12 We see here also translation to U.S. dollars. And the
13 document ends with a transfer of funds that was carried out to
14 the Fatah movement in Tulkarm where the movement received the
15 amount of 42,000 shekels.

16 Q. If we turn the page over, in our binders, do we see a total
17 amount in shekels and dollars?

18 A. I see such figures.

19 Q. What are we talking about in terms of shekels and dollars
20 here?

21 A. The total amount of the monetary transfers in shekels are
22 in the sum of 520,381 shekels. And in dollars it is \$130,095.

23 Q. Thank you. Could you turn in your binder to Exhibit 20.

24 A. I have it before me.

25 Q. Can you describe generally what this document is.

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Eviatar - direct

1 A. A transfer of funds from the Finance Ministry of Palestine
2 to the Fatah movement in the West Bank.

3 MR. YALOWITZ: Your Honor, plaintiffs offer Exhibit 20
4 in evidence.

5 THE COURT: It will be admitted into evidence.

6 (Plaintiff's Exhibit 20 received in evidence)

7 Q. Why don't you tell us what we've got on the front page.
8 We'll put it up on the screen for the jury.

9 A. We see here a breakdown of a transfer of funds, or to be
10 more precise, transfers of funds, from the Finance Ministry to
11 the Fatah movement in the West Bank on six separate dates in
12 the course of the year 2003. The total sum that was
13 transferred is 100,000 shekels.

14 Q. Let's go to the next page, and why don't you tell us what
15 we've got there.

16 A. A transfer of funds from the Palestinian Finance Ministry
17 to the Fatah movement in North Hebron. The sum that appears
18 here is 17,500 shekels.

19 Q. Let's go to the next page and tell us what we've got.

20 A. Another transfer of funds from the Palestinian Finance
21 Ministry to the Fatah movement in the Al-Shurfa region, that's
22 near Ramallah, in the sum of 7,500 shekels.

23 Q. I want to direct your attention to the heading at the top
24 of the page. It says Ministry of Finance Palestine. Do you
25 have an understanding of -- are they referring there to the

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Eviatar - direct

1 Palestinian Authority or the PLO or what?

2 A. They're referring to Palestine. That's in fact the
3 Palestinian Authority. But the Palestinians refer to the
4 Palestinian Authority as Palestine in some of the documents.

5 Q. Thank you. Now, let's go to the final substantive page.
6 Skip one page, and there is a page that's numbered 6839. Let's
7 see if we can look at that together.

8 Could you tell us what we have here.

9 A. May I have a moment?

10 Q. Yes.

11 A. We see here transfers of funds to the Fatah movement in
12 different areas. And the bank that received these moneys,
13 that's where the account is being held, that is the branch of
14 the Arab Bank located in Ramallah. That's where the Fatah
15 movement holds an account.

16 Q. Thank you. Now, I'd like to turn from the funding --

17 MR. ROCHON: Your Honor, before we leave that
18 document, may I have a brief sidebar with counsel, and if the
19 document can go back on the screen.

20 THE COURT: Yes.

21 (Pause)

22 MR. ROCHON: Pursuant to agreement with counsel, we
23 agree that that stamp at the bottom that says "confidential"
24 was not part of the original document. That's just part of how
25 documents were produced in the case.

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Eviatar - direct

1 MR. YALOWITZ: The lawyers have agreed that the
2 lawyers put that on. It is not the Palestinians.

3 THE COURT: I understand and I think the jury
4 understands.

5 MR. ROCHON: Thank you.

6 Q. All right. Now, I'd like to turn to the administration of
7 the security forces, and I want to ask you, first of all, have
8 you had any opportunity to review documents relating to
9 administrative orders with regard to certain public security
10 forces of the PLO and the Palestinian National Authority?

11 A. Could you direct me to the relevant documents?

12 Q. Sure. If you could turn in your binder to Exhibits 104,
13 105, 106, and 108. If you could just identify those generally.

14 A. I see them and I have indeed reviewed them.

15 Q. What are they generally?

16 A. These are documents that show transfers of funds to members
17 of the security forces.

18 Q. All right.

19 A. And further instructions coming from Yasser Arafat.

20 MR. YALOWITZ: Your Honor, plaintiffs offer 104, 105,
21 106 and 108 in evidence.

22 MR. ROCHON: Your Honor, we're not going to object,
23 but I don't think they've been described yet, so we are not
24 going to object but --

25 MR. YALOWITZ: So why don't we offer them in evidence

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Eviatar - direct

1 and then the witness can explain them in a more detailed way.

2 THE COURT: I'll admit into evidence subject to
3 further inquiry.

4 MR. YALOWITZ: All right.

5 (Plaintiff's Exhibit 104, 105, 106, 108 received in
6 evidence)

7 Q. Let's take a look at 104. What is this document?

8 A. There is a breakdown here of various position holders,
9 officers in the security forces, together with their ranks.
10 With their rank, a date, and the name of the force in which
11 they are serving.

12 Q. What is the purpose of this document?

13 A. May I have a moment?

14 Q. Sure. You might prefer the Arabic which is behind the
15 English.

16 A. This is a document that was disseminated by the PLO, the
17 Palestinian Authority, and the security forces, in which
18 promotions of rank are being authorized by the Palestinian
19 president and commander in chief of the security forces, and
20 there is a list of those Palestinian officers that were
21 promoted.

22 Q. Now, I want to focus with you first with the description at
23 the top of the page of the entities on whose behalf this
24 document was created.

25 Could you describe those entities, please.

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Eviatar - direct

1 A. At the top of the document we have the PLO, underneath
2 which we have the Palestinian National Authority, which is the
3 Palestinian Authority, under that we have the name of the
4 security force which is known as Public Security. After that
5 we have the Organization and Administration Institution of the
6 government, and after that we have officer affairs.

7 May I add that in the emblem that we see here, at the
8 top it says also the Palestine Liberation Organization and
9 underneath that the Palestinian National Authority.

10 Q. So that's a stamp that has both PLO and PA on it?

11 A. Yes indeed.

12 Q. Thank you. Could you turn to -- by the way, I just want to
13 note and this will be true of --

14 MR. YALOWITZ: Your Honor, may I consult with
15 Mr. Rochon for a moment?

16 THE COURT: Yes.

17 (Pause)

18 MR. YALOWITZ: Your Honor, with the Court's
19 permission, Mr. Rochon and I have reached an agreement to
20 inform the jury that when they see a stamp that says
21 "confidential" like the one we saw before, on this document and
22 similar documents, just to inform them that those confidential
23 stamps were applied by the lawyers and not in the original
24 documents.

25 THE COURT: I assume also the Bates number.

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Eviatar - direct

1 MR. ROCHON: The numbers on the bottom right as well.
2 It is all lawyers stuff.

3 THE COURT: Ladies and gentlemen, that's the discovery
4 process where both sides exchange documents and make sure they
5 mark them and where they can keep track of them and which
6 documents is confidential at the time.

7 MR. YALOWITZ: Thank you, Mr. Rochon, and thank you,
8 your Honor.

9 Q. Let's go to 105. Is this another one of those
10 administrative orders?

11 A. This is another administrative order that comes from the
12 security forces, the same department in the security forces of
13 the Palestinian Authority. The PLO. And here we are talking
14 about ranks of enlisted soldiers -- or rather soldiers, and not
15 officers.

16 Q. Can we just blow up that heading again. I just wanted to
17 ask you, do you still have the laser pointer that the judge
18 shared with you? Could you just highlight for the jury where
19 on that stamp it says PLO.

20 A. In Arabic. Here in Arabic it says the Organization for the
21 Liberation of Palestine.

22 Q. Where on that logo stamp does it say PA?

23 A. Here it says in Arabic the Palestine National Authority.

24 THE INTERPRETER: Excuse me. Palestinian National
25 Authority.

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Eviatar - direct

1 Q. Let's look at 106 and see what that one looks like. Why
2 don't we focus in again on -- first of all, what is this
3 document?

4 A. We see here an order, an administrative order it could be
5 called, disseminated by the same entity in the Palestinian
6 Authority and the PLO. And here it says "Pursuant to the
7 instructions of his excellency, the president, commander in
8 chief of the security forces." And this order promotes by two
9 ranks Major Majed Al-Masri who serves in the Palestinian police
10 department in the West Bank to the rank of colonel, "aqeed" in
11 Arabic. That's one rank above mine.

12 Q. What is the date of this document?

13 A. This document is dated January 25, 2010. I just wanted to
14 check that the text in Arabic and in English were identical.

15 Q. Have you had an opportunity to do so?

16 A. Yes, I did.

17 Q. This is a promotion record from 2010?

18 A. Yes indeed.

19 Q. Majed Al-Masri, is that a name familiar to you?

20 A. The name Majed Al-Masri is indeed familiar to me.

21 Q. Who is he?

22 A. Majed Al-Masri served as an officer in the Palestinian
23 Security Forces, and today Majed Al-Masri is a prisoner in an
24 Israeli jail and has been for a number of years.

25 MR. YALOWITZ: Can we just direct the jury, with the

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Eviatar - direct

1 Court's permission, to Exhibit 384 in evidence, your Honor.

2 THE COURT: Do you want to put it up on the screen?

3 MR. YALOWITZ: Yes, sir.

4 THE COURT: Yes.

5 MR. YALOWITZ: Your Honor, with the Court's
6 permission, I'd like to direct the jury to the verdict in which
7 Majed Al-Masri was convicted.

8 MR. ROCHON: Objection. Now counsel is testifying.

9 MR. YALOWITZ: Your Honor, I'm sorry. Your Honor, I
10 apologize. Your Honor, may I direct the jury's attention to
11 the name of the defendant in Exhibit 384.

12 THE COURT: All right. Go ahead. Do you want it
13 highlighted?

14 MR. YALOWITZ: Majed Ismael Muhammad Al-Masri.

15 And if your Honor will bear with me, I just want to
16 direct the jury to --

17 MR. ROCHON: Your Honor, I have an objection. May we
18 approach the bench briefly?

19 THE COURT: With regard to what he's getting ready to
20 do?

21 MR. ROCHON: An objection to form. Not otherwise.

22 THE COURT: No. I don't want to waste the time.

23 MR. YALOWITZ: Thank you, your Honor.

24 THE COURT: You just want to show them a document?

25 MR. YALOWITZ: Yes, sir. I would like to show them

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Eviatar - direct

1 page 28 of this conviction.

2 THE COURT: All right.

3 MR. YALOWITZ: Count six through eight. We can just
4 go wide and highlight the title, Ms. Machnes. May I read to
5 the jury, your Honor?

6 THE COURT: Yes.

7 MR. YALOWITZ: "Count six through eight of the
8 indictment, the attack on Jaffa Street.

9 "These counts of the indictment attribute to the
10 defendant responsibility for the murder of the late Ora Sandler
11 and Sarah Hamburger, and an attempt to cause the death of 45
12 civilians who were injured in the event. The event was
13 executed on behalf of and in the name of the Al Aqsa Brigades
14 organization. The defendant is charged with having received
15 the suicide terrorist in an apartment in the Balata camp, and
16 having filmed him holding a rifle and a book of the Koran along
17 with another individual. Thereafter, the defendant dispatched
18 the suicide terrorist Said on his last way."

19 I think we have enough, your Honor. Let's go back to
20 106.

21 Q. I'd like to focus you on the entities at the top of 106 and
22 if you could just describe for the jury the top two entities.

23 A. The top line says the Palestine Liberation Organization and
24 underneath it, it says the Palestinian National Authority. And
25 that's the Palestinian Authority.

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Eviatar - direct

1 Q. Thank you. Let's go to 108. What is Exhibit 108?

2 A. Just a moment, please.

3 There is confirmation here that was given by the
4 organization and administrative branch of the Palestinian
5 Authority that confirms that ageed, "ageed" is a colonel,
6 Nasser Mahmoud Ahmed Aweis is one of its members, that he's an
7 officer that serves in that entity of the Palestinian
8 Authority, and he's detained in prison in Israel since April 9,
9 2003.

10 Q. So first of all, what is the date of this document?

11 A. The 27th of September, 2011.

12 Q. The document is 2011 and it is saying --

13 On whose behalf is this document prepared, according
14 to the listing at the top of the document?

15 A. The document was issued by the PLO, the Palestinian
16 National Authority, the National Security, and the organization
17 and administration branch, one could say. The officer -- the
18 Office of Officers Affairs.

19 Q. What is the name of the individual being discussed in this
20 document?

21 A. The name of the officer is Nasser Aweis.

22 MR. YALOWITZ: Your Honor, may I just read from part
23 of the document?

24 THE COURT: Yes.

25 MR. YALOWITZ: "The Palestinian National Authority's

Flf3sok5

Eviatar - direct

1 Organization and Administration Institution affirms that
2 Colonel Nasser Muhammad Ahmed Aweis is one of its members, and
3 that he was detained by the Israeli Army on April 9, 2003."

4 Q. Now, Mr. Eviatar, have you had occasion to meet Nasser
5 Aweis?

6 A. Yes, I have personally met Nasser Aweis.

7 MR. ROCHON: Your Honor, we would be objecting to
8 hearsay here if we can approach.

9 THE COURT: Well, not yet. What is your next
10 question?

11 MR. YALOWITZ: Do you recognize his picture.

12 MR. ROCHON: That's not -- I don't object to that one.

13 THE COURT: "Do you recognize his picture?"

14 MR. ROCHON: I don't object to that one.

15 THE COURT: Okay. You can answer that.

16 THE WITNESS: I recognize his picture. I cannot
17 forget him.

18 MR. YALOWITZ: Your Honor, may we show the jury the
19 picture of Nasser Aweis? We move it in evidence. We will
20 identify this as Plaintiff's 1153.

21 THE COURT: Any objection to the photo?

22 It will be admitted into evidence. You can display
23 it.

24 (Plaintiff's Exhibit 1153 received in evidence)

25 Q. Is that him?

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Eviatar - direct

1 A. That's Nasser Aweis.

2 Q. Where did you meet him?

3 A. I met him during the course of a professional visit that I
4 paid to prison.

5 Q. Why is it that you can't forget him?

6 MR. ROCHON: Objection, your Honor.

7 THE COURT: Sustained. Don't answer the question.
8 Sustained as to the form of that question.

9 Q. What about him do you remember?

10 MR. ROCHON: Objection, your Honor.

11 THE COURT: Just a second.

12 MR. ROCHON: I know the Court is trying to avoid bench
13 conferences but -- thanks.

14 (Continued on next page)

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Eviatar - direct

(At the sidebar)

THE COURT: What terrible prejudicial thing is that you want to ask this witness to testify to that Mr. Rochon is concerned that he's going to say?

MR. YALOWITZ: My recollection is he is going to say he met Nasser Aweis and Nasser Aweis said "I regret nothing."

MR. ROCHON: Number one is it is already in evidence. Number two, that's essentially what the guy said when he was sentenced. Number two, the concern I have is this witness is willing to go a little more dramatic than your average expert. And when he says "I'll never forget him," you know it going to get dressed up too much.

THE COURT: I'm not sure it is within the scope of his expert opinion or the scope of any factual testimony that would be independently relevant at this point.

MR. YALOWITZ: Why don't we keep moving.

(Continued on next page)

Flf3sok5

Eviatar - direct

1 (In open court)

2 MR. YALOWITZ: Your Honor, I think we need a ruling.

3 THE COURT: Objection sustained.

4 MR. YALOWITZ: Thank you.

5 Q. Mr. Eviatar, could you turn in your binder to Exhibit 512.

6 A. I see it here before me.

7 Q. What is it?

8 A. This exhibit presents the prisoners log, the log of
9 prisoners and released prisoners as the law was enacted by the
10 Palestinian government.

11 (Continued on next page)

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FlfQsok6

Eviatar - Direct

1 MR. YALOWITZ: Your Honor, plaintiffs move Exhibit 512
2 in evidence.

3 MR. ROCHON: Subject to the prior, no objections, your
4 Honor.

5 THE COURT: It will be admitted.

6 (Plaintiff's Exhibit 512 received in evidence)

7 Q. Now, let's take a look at Article 1 of page 2, the
8 definition of prisoner.

9 MR. YALOWITZ: Your Honor, may I read that definition
10 to the jury?

11 THE COURT: Yes.

12 Q. "Prisoner: Anyone who is kept in prisons of the occupation
13 for offenses of participating in the struggle against the
14 occupation."

15 Can you explain to the jury what kinds of prisoners
16 are subject to this law based on this definition?

17 A. This law pertains solely and exclusively to prisoners who
18 are incarcerated as a result of their participation in the
19 struggle against Israel.

20 Q. What kinds of crimes are we talking about here?

21 A. There can be prisoners here who were tried for shooting
22 offenses, for placing bombs, for terrorist attacks of various
23 types, including suicide bombers -- including suicide attacks.

24 Q. Are there also lesser crimes that are included within this
25 definition?

FlfQsok6

Eviatar - Direct

1 A. Every prisoner who is incarcerated as a result of his
2 participation in the struggle is included in the definition
3 under this law.

4 MR. ROCHON: Objection. Not responsive, your Honor.

5 THE COURT: No, overruled. You can cross-examine.

6 MR. ROCHON: All right.

7 Q. Now, there is also a definition of released prisoner.

8 A. Of course.

9 Q. Let's just see if we can get that definition in front of
10 the jury as well. I'm not sure how easy that is.

11 MR. YALOWITZ: Released prisoner. With the Court's
12 permission, I'll read it.

13 THE COURT: Yes.

14 Q. "Released prisoner: Any prisoner who has been released
15 from prisons of the occupation."

16 Does that released prisoner definition include
17 people -- let me ask you this: Does the prisoner definition
18 include people who commit what we might call street crime?

19 A. Absolutely not.

20 Q. What about released prisoner, does that include people who
21 committed street crimes?

22 A. Also absolutely not.

23 Q. Now, I'd like to direct you to some regulations on pages 4
24 to 5. I want to focus on Article 1.

25 MR. YALOWITZ: Your Honor, may I read this?

FlfQsok6

Eviatar - Direct

1 THE COURT: Yes.

2 MR. YALOWITZ: Thank you.

3 Q. "Article 1. The following regulations of the law of
4 prisoners and released prisoners are issued:

5 "1. System to secure employment for released
6 prisoners.

7 "2. System of monthly salary payment to the prisoners
8 and their families.

9 "3. System to secure a living allowance and yearly
10 clothing allowance for prisoners inside Israeli prisons and
11 detention centers.

12 "4. System of exemption from school and college
13 tuition fees, health insurance fees and training courses fees."

14 Do these four items relate to people who commit those
15 struggle against the occupation crimes?

16 A. Unequivocally, yes.

17 Q. Is there any exception to those benefits if you commit
18 murder?

19 A. Only those who fall under the category of what I described
20 previously -- of what I defined previously, excuse me.

21 Q. So if you commit a murder just of a person in like a
22 business dispute, do you get these benefits?

23 A. No, the law doesn't pertain to that at all.

24 Q. But if you commit a murder of people riding on a bus inside
25 Jerusalem, do you get those benefits?

FlfQsok6

Eviatar - Direct

1 A. If you killed Israeli civilians or other civilians who were
2 riding on the bus, and that falls within the framework of the
3 struggle against Israel, you are entitled to the benefits that
4 are enumerated here.

5 Q. So I would like to focus with you on Article 9. Bear with
6 me. Article 20. I'm sorry. I do want Article 9. Forgive me.
7 Perhaps I'm getting ahead of myself.

8 Let's look at Article 9.

9 MR. YALOWITZ: May I read Article 9, your Honor?

10 THE COURT: Yes.

11 Q. "Every Palistinian or Arab prisoner in Israeli prisons or
12 detention centers has the right to receive a salary that is
13 paid to him or his family if the following conditions are met:

14 "A. If he was detained as a result of his resistance
15 to the occupation.

16 "B. If he is not receiving a monthly salary from any
17 other governmental or non-governmental institution."

18 So I want to ask you a few questions about that
19 Article 9. First of all, it says, "Every Palistinian or Arab
20 prisoner." What is meant by that?

21 A. The meaning of that is that the prisoner may be a
22 Palistinian citizen under the Palestinian Authority or an
23 Israeli citizen of Arab extraction, or a Jordanian citizen of
24 Arab extraction. What is important is the reason for his
25 incarceration.

FlfQsok6

Eviatar - Direct

1 Q. So somebody is a citizen of like Kuwait, and he goes to
2 Jerusalem and kills a civilian --

3 MR. ROCHON: Objection, your Honor.

4 THE COURT: Sustained as to the form of the question.

5 Q. So does the term Arab prisoner include people from places
6 other than Israel, Palestine and Jordan?

7 A. Yes. There are other people who are citizens of other Arab
8 countries.

9 Q. If you are a person of Arab heritage from the country of
10 Morocco, do you qualify under this law if you meet the
11 conditions?

12 A. Yes, you qualify for these criteria.

13 Q. If you are a person of Arab descent from the United States,
14 do you meet these conditions if you are qualified under this
15 law?

16 A. Yes, you do.

17 Q. Now, if you are a person of non-Arab descent and you are
18 not a Palistinian citizen, can you qualify under this law?

19 A. I would think not.

20 Q. Now, I also want to ask you about condition A. If he was
21 detained as a result of his resistance to the occupation as
22 used in this context, is that different from the definition of
23 prisoner where they talk about struggle against the occupation?

24 A. It's the same definition.

25 Q. I also want to ask you about condition B. If the prisoner

FlfQsok6

Eviatar - Direct

1 is not receiving a monthly salary from any governmental or
2 non-governmental institution, why do they have that in your
3 understanding?

4 A. If that Palistinian prisoner -- I'll explain the difference
5 briefly for the jury. If that Palistinian prisoner is
6 registered as someone who is employed by the Palestinian
7 Authority, whether he held a position in the military apparatus
8 or in one of the civilian apparatuses of the Palestinian
9 Authority and at that time he carried out his offenses, he will
10 continue to receive during the time that he is in prison the
11 same salary that he received previously from the Palestinian
12 Authority with the raises as would be pursuant further on.

13 If he was, however, a Palistinian who was, when he was
14 arrested, not an employee of the Palestinian Authority, for
15 example, a member of Hamas or a member of the Islamic jihad, or
16 a member of the popular front for the liberation of Palestine,
17 he would receive a salary from the Palistinian Authority during
18 the time that he is in prison.

19 Q. All right. I think I get it. I want to go to page 12,
20 Article 20. I just want to ask you once we get it on the
21 screen what we are looking at here. What is this article
22 dealing with?

23 A. There's a table here that defines the salary that each
24 prisoner will receive from the Palestinian Authority, and the
25 salary rises directly relative to the number of years that he

FlfQsok6

Eviatar - Direct

1 is a prisoner. If, for example, you've been convicted for 15
2 years, up to the first five years you receive a thousand
3 shekels a month. And when you reach the category of 5 to 10
4 years, you get 1,300 shekels and so on and so forth. If you
5 are married, there is another addition of 300 shekels. And if
6 you have children, you get a further additional amount.

7 Q. So what is the jump -- what's the raise you get after
8 you've sat in jail for five years according to this law?

9 A. Could you be more precise in wording the question?

10 Q. Sure. According to this law, once you've been in jail for
11 five years for committing a crime in accordance with the
12 struggle against the occupation, what does your salary go from
13 and what does it become after you've passed the five-year mark?

14 A. If you are unmarried, you get 1,000 shekels for up to five
15 years, and if you continue to be unmarried, you get 1300
16 shekels a month.

17 Q. For a prisoner who sits in jail for ten years, how much
18 does he get for the anniversary of his tenth year
19 incarceration?

20 A. At least 2,000 shekels a month.

21 Q. And when the prisoner passes the 15th year of his
22 incarceration, how much does he start getting a month?

23 A. Up to the 17th year, he will get 2,500 shekels, and up to
24 20 years he'll receive 2,000 shekels per month.

25 Q. Let's just show the jury the next piece of the chart. When

FlfQsok6

Eviatar - Direct

1 a prisoner reaches 17 years, how much does he get?

2 A. 3,000 shekels.

3 Q. And when the prisoner has sat in jail for 20 years, how
4 much does he get?

5 A. 3,500 shekels.

6 Q. And when the prisoner has sat in jail for 25 years, what
7 salary do they pay him as a base?

8 A. The base salary would be 4,000 shekels. I would just like
9 to note that these amounts are separate from what are known as
10 canteen fees that each prisoner receives in addition.

11 Q. Now, in order to receive this salary that runs from a
12 thousand shekels a month to 4,000, does the prisoner have to
13 perform any services for the Palestinian Authority or the PLO?

14 A. He doesn't have to do anything.

15 Q. What is the result of a system like this in your
16 experience?

17 MR. ROCHON: Objection, your Honor.

18 THE COURT: Sustained as to form.

19 Q. Is this system well-known?

20 MR. ROCHON: Objection, your Honor.

21 THE COURT: Sustained again. It's also leading. I'm
22 not sure where you're going.

23 Q. During your years in the West Bank, did you have occasion
24 to learn about this system from individuals you met from time
25 to time?

FlfQsok6

Eviatar - Direct

1 MR. ROCHON: Objection, your Honor. I'm sorry, but it
2 was a yes-or-no question. Therefore, I'm --

3 THE COURT: No, I'm going to let him continue the
4 answer. You can continue.

5 A. Yes. I met with former prisoners, for example, from the
6 Fatah movement who told me about how this system was
7 implemented.

8 Q. Based on your experience and knowledge, how would you say
9 the system was implemented? Just explain what you mean by
10 that.

11 MR. ROCHON: Objection to form.

12 THE COURT: Overruled. You can answer.

13 A. Could you repeat the question, please?

14 MR. YALOWITZ: Maybe we can have it read back.

15 THE INTERPRETER: I can read it back.

16 (Read back)

17 A. This law and its translation based on my experience is one
18 of the most significant elements that Palistinian government
19 views as an accomplishment that it can present to the
20 Palistinian public towards the prisoners and their families.

21 Q. Is the program administered in a systematic way?

22 A. Yes, and it is updated every couple years.

23 Q. I would like to direct your attention to Article 10.

24 MR. ROCHON: There are two article 10s in the
25 document, your Honor.

FlfQsok6

Eviatar - Direct

1 THE COURT: I think we want this one.

2 MR. ROCHON: I guess that's what he wanted.

3 THE COURT: Is that the one we wanted?

4 MR. YALOWITZ: Shockingly, it is.

5 THE COURT: As long as everybody knows what we're
6 going to do.

7 MR. YALOWITZ: Ms. Machnes knows what I'm going to do
8 before I know what I'm going to do.

9 Q. Can you take a look at Article 10, Mr. Eviatar?

10 A. Yes, Attorney Yalowitz. I have the form in English and in
11 Arabic.

12 Q. I just want to know, are these the kinds of documents
13 that -- why don't I slow it down?

14 MR. YALOWITZ: Your Honor, may I just read portions of
15 this Article 10?

16 THE COURT: Yes.

17 MR. YALOWITZ: Thank you, sir.

18 Q. "The prisoners' relatives must produce the following
19 evidentiary documents:

20 "1. Original certificate from the Red Cross
21 documenting his detention. This document shall be renewed
22 every three months for the prisoners who are still in detention
23 and once a year for the prisoners who have been sentenced.

24 "2. The charge sheet issued by the Israeli military
25 prosecutor.

FlfQsok6

Eviatar - Direct

1 "3. A copy of the prisoner's personal identity card.

2 "4. A copy of the personal identity card of the
3 prisoner's agent.

4 "5. A copy of the prisoner's marriage certificate, if
5 he is married.

6 "6. A copy of the birth certificates of the
7 prisoner's children.

8 "7. The account number [which is] in the name of the
9 agent, in a bank inside the territories of the national
10 authority.

11 "8. The sentence, if the Israeli courts have
12 sentenced him."

13 Are these items required for every prisoner who
14 receives these payments?

15 A. Yes.

16 Q. As a matter of course, are they received -- well, let me
17 ask you this: Have you had the opportunity to review files of
18 the prisoners' authority?

19 A. I've gone over many such files.

20 Q. In your experience, do those files actually contain the
21 required documents?

22 A. Yes, systematically so.

23 Q. Now, I want to direct your attention to Article 13.

24 MR. YALOWITZ: With the Court's permission, I'll read
25 it.

FlfQsok6

Eviatar - Direct

1 THE COURT: Yes.

2 Q. "The general directorate for detainees' affairs shall
3 prepare a special file containing all the evidentiary documents
4 for the prisoner, its observations on the file and the
5 specified the salary that he shall receive based on his status.
6 The complete file shall be submitted to the Department of
7 Oversight and Examination to confirm the accuracy of the
8 documents and that the salary corresponds with the information
9 in the file."

10 To your knowledge and based on your experience, can a
11 prisoner receive payments without submitting all of the
12 required documents and making sure the file is complete?

13 A. No.

14 Q. Thank you.

15 Do you have an opinion as to whether these payments
16 are social welfare payments?

17 A. These payments are not social welfare payments.

18 Q. Do you have any statements of PA officials that support
19 your opinion?

20 A. Yes, we have an example of a statement that was made by the
21 minister of prisoners affairs himself. His name is Issa
22 Karaka.

23 MR. ROCHON: Your Honor, there is an issue I want to
24 discuss with the Court.

25 THE COURT: Can we take a break for the day?

FlfQsok6

Eviatar - Direct

1 MR. YALOWITZ: I can continue or I can continue for
2 awhile, as the Court wishes.

3 THE COURT: Let me give the jurors a break. Ladies
4 and gentlemen, why don't we adjourn for the day. Don't discuss
5 the case. Keep an open mind. See you at 9:30 tomorrow.
6 Tomorrow is Friday. I will try to give you an idea where I
7 think we are.

8 Remember Monday is a holiday, so we won't sit till
9 Tuesday. So you have a long weekend.

10 (Jury excused)

11 (Continued on next page)
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FlfQsok6

Eviatar - Direct

1 (Jury not present)

2 MR. ROCHON: The Court will recall that there were a
3 series of exhibits that we were going to address, and counsel
4 thought we weren't going to get to today, one of them is the
5 video or the statement that he was just referring to, I
6 believe. I know the witness was told to step down.

7 THE COURT: Yes, you could tell him to step down.

8 (Witness excused)

9 MR. YALOWITZ: May I consult with Mr. Rochon?

10 THE COURT: Yes.

11 MR. YALOWITZ: The jury is gone.

12 (Off the record)

13 MR. ROCHON: I have to say I think we are in dispute,
14 but I have to admit Mr. Yalowitz is right. I was not thinking
15 it was that one, so I recognize that may have been wrong.
16 Either way, I think we do have an objection to this one as
17 well.

18 THE COURT: What is it? I don't know what you're
19 talking about.

20 MR. ROCHON: I just took a quick glance at it and
21 realized it wasn't what I was thinking of, and I don't have it
22 in front of me right now but I can probably get it.

23 THE COURT: I just want to know what it is and why
24 you're objecting.

25 MR. HILL: Mr. Yalowitz can tell us which one he's

FlfQsok6

Eviatar - Direct

1 going to offer.

2 MR. YALOWITZ: It's 241, your Honor. It's a statement
3 published by WAFA, which is the Palistinian authorities
4 official news agency. And he says: This is WAFA. It says:
5 "The minister of detainees and ex-detainees affairs, Issa
6 Karaka, denied on Thursday the news reports and rumors about
7 converting the prisoners' wages to welfare payments."

8 That is the statement I was thinking of.

9 THE COURT: Is there anything earth-shattering about
10 that statement?

11 MR. HILL: It's not a quote from him. It's a
12 secondary report. Something he allegedly said. It's more
13 prejudicial than it is probative. The law is what the law is.
14 The witness has testified about it. When we get to cross,
15 we'll point out to everybody in the room that it wasn't the law
16 in effect at the time that the people that were convicted were
17 these torts they were involved with.

18 THE COURT: Again, that's your favorite phrase; it's
19 more prejudicial than probative, but I'm not sure I understand
20 how you are prejudiced.

21 MR. HILL: Mr. Yalowitz, and presumably the witness,
22 are going to argue they are not social welfare, they're wages
23 or salaries, as the translation that they were working with
24 today pointed out, and that somehow that makes us liable for
25 the crimes that these non-employees committed.

FlfQsok6

Eviatar - Direct

1 It has no relevance to the jury's inquiry, which is,
2 are the PA or PLO liable for the torts these non-employees
3 commit. It doesn't make it any more likely that we're liable.
4 All it does is prejudice the jury against us because they won't
5 like that Mr. Karaka said they were wages and not welfare in
6 2012, ten years after the events. The fact a politician says
7 something that gets picked up in a press ten years later is not
8 relevant.

9 THE COURT: Mr. Yalowitz, is there something
10 compelling about this statement that is quoted in 2012?

11 MR. YALOWITZ: Yes. First of all, your Honor, this is
12 not the press. This is the official news agency of the
13 defendant. It's called WAFA. When WAFA writes Issa Karaka
14 says blah, blah, blah, that's not hearsay; that's an admission,
15 because it's a defendant. And I heard Mr. Rochon stand in
16 front of the jury two days ago and say these were welfare
17 payments. It was a welfare state. And I've got his own client
18 two years ago, whatever, three years ago, saying "It's not
19 welfare." And so it doesn't really matter when it was. It
20 matters what it is because they're still getting those payments
21 today.

22 THE COURT: I don't remember Mr. Rochon's comment. Is
23 there a specific comment that I'm supposed to remember, Mr.
24 Rochon, something you said in opening about welfare payments?

25 MR. ROCHON: Let me say, I don't have the transcript

FlfQsok6

Eviatar - Direct

1 in front of me. I'm sure I used a reference to either social
2 welfare to the general society but I don't know if I -- there
3 are three different types of payments here. I bet I said
4 social welfare in there somewhere or welfare or something like
5 that.

6 THE COURT: Do you have a page of the transcript that
7 you are referring to so I can point out Mr. Rochon to it?

8 MR. YALOWITZ: This one is from personal memory.

9 THE COURT: I will look for it.

10 MR. YALOWITZ: I thought he did a nice opening. I was
11 paying close attention.

12 MR. ROCHON: Your Honor, I don't think it's time to
13 impeach my opening yet.

14 MR. YALOWITZ: I had the ammunition to do it.

15 THE COURT: Welfare payments or not welfare payments,
16 you may have made relevant if you asserted that the facts are
17 going to indicate that the facts are that they are welfare
18 payments.

19 MR. ROCHON: Let me be clear to the Court. I don't
20 know my exact words. I'm sure I said something like social
21 welfare. I have to look at the transcript. I was referring to
22 the general society. I don't know I said "these prisoner
23 payments." I have to say, I don't have the transcript in front
24 of me. If I'm wrong, of course the transcript will show it.

25 THE COURT: If you reference any prisoner payments --

FlfQsok6

Eviatar - Direct

1 MR. ROCHON: I doubt it.

2 THE COURT: -- to being welfare payments or not
3 welfare payments, I think that they have the right to rebut
4 that statement by showing that they can take this out of the
5 realm of that dispute. The PA's own official paper is quoting
6 its minister of detainees and ex-detainees as saying it is not
7 what you said it was.

8 MR. ROCHON: Since we did take a break, I'll check the
9 opening and see if I have additional arguments in the morning.

10 THE COURT: I will look at it. If that is the case,
11 then I'm going to let him go ahead. If it is not the case,
12 I'll consider it further, but I may let him go ahead anyway.

13 MR. ROCHON: Judge, may I ask two short questions?

14 Number one, the practice of counsel reading exhibits
15 to the jury is not one that I'm normally familiar with,
16 especially if they have already been read once, like yesterday,
17 and Mr. Yalowitz just liked it so today we read Majid Al-Masri
18 again to the jury.

19 THE COURT: There is no rule that prohibits a lawyer
20 from reading from an exhibit that is in evidence in order to
21 quote the relevant language that the lawyer would like to
22 direct the jury's attention to. Obviously, one way to do it,
23 and the standard way to do it, is to ask the witness to read
24 it. But I don't think that it violates any rule or practice by
25 having a lawyer read it if that is all and is read without

FlfQsok6

Eviatar - Direct

1 commentary or testimony from the lawyer.

2 MR. ROCHON: I understand the Court's ruling on that.

3 The second one is even shorter. The Court works
4 awfully hard. Does the Court take off any earlier on a Friday?
5 I want to get my team back to D.C. We all have been up here
6 for awhile.

7 THE COURT: I did last week Friday because you had to
8 be here Saturday and Sunday working on this.

9 MR. ROCHON: The Court knows it's going to be that we
10 all have to get train tickets back, and I want to figure out
11 which train to get on.

12 THE COURT: What's your favorite train?

13 MR. ROCHON: I'm about to calibrate so perfectly
14 between what I can get and what I can ask for, I'd really like
15 the 5:00 train.

16 MR. YALOWITZ: I have a suggestion, your Honor.

17 THE COURT: You like the 5:00 train?

18 MR. YALOWITZ: I have a suggestion, your Honor. One
19 member of our team observes the Sabbath. She is going to head
20 out about --

21 MS. WEISER: 2:30, quarter to 3:00.

22 MR. YALOWITZ: Quarter to 3:00 tomorrow. Maybe even
23 2:30. She is not going to be here the whole trial, but she is
24 here tomorrow.

25 THE COURT: We will talk a little tomorrow about where

FlfQsok6

Eviatar - Direct

1 we think where we are. I want to be able to tell the jury --
2 but you would have to give me some confidence that I can do
3 that -- that I am going to at this point predict that we will
4 be finished either sometime before the end of February or
5 sometime just after the beginning of March, I think somewhere
6 in that range. I'm hopeful. I don't know if that is too
7 optimistic, but you have to think about that.

8 MR. ROCHON: I was hoping that was pessimistic, but
9 I'll turn to Mr. Yalowitz.

10 MR. YALOWITZ: Yes, so we have gone a little slower
11 than I thought we would, but not a lot slower than I thought we
12 would. I think that -- I've got to look. We've cut down our
13 case a little bit. I can look and I will try to assess it
14 tomorrow.

15 THE COURT: I just don't want to tell them the wrong
16 thing. I don't want to be too optimistic so let's be realistic
17 about it, but let's not make it too depressing. They don't
18 want to be here forever.

19 MR. YALOWITZ: I will do my best to honor it your
20 Honor.

21 THE COURT: Just don't tell me June or something.

22 MR. YALOWITZ: I am not going to spend too much time
23 at the office tonight because I have to pay a condolence call.
24 We are behind where I thought we would be right now but not a
25 lot behind.

FlfQsok6

Eviatar - Direct

1 THE COURT: Tomorrow I would like to end depending how
2 much we get done, I would like to end sometime maybe as early
3 as 4:00, as late as 4:30, depending on how much progress we are
4 making. If we are slowing down, I may be more concerned about
5 using the hours. If we are making good pace after that, then I
6 would like to sort of shoot for sort of a 4:00 or earlier
7 ending on Fridays and maybe even earlier than that or even
8 taking another Friday and doing a half day or taking a Friday
9 off altogether, but I will try to accommodate all of that.

10 MR. ROCHON: Thank you, your Honor.

11 MR. HORTON: I will note, your Honor, I'm on the 7:00
12 train back to D.C., and I recommend it to Mr. Rochon.

13 THE COURT: You guys can sit together.

14 Two things: I am going to give you back what my edits
15 are on 889. Neither one is going to be happy. It's not as
16 much as the defense wants and it's more than the plaintiffs are
17 asking for. I give you this to look at it. I think you'll
18 pretty much see the pattern. I will give you an opportunity to
19 convince -- are we dealing with this tomorrow?

20 MR. YALOWITZ: I am hoping we will get to that. I am
21 fairly confident that we will be able to work with whatever we
22 got from the Court.

23 THE COURT: Unless you can come to some other
24 agreement, this is pretty much my attitude. You might be able
25 to convince me first thing in the morning to give it a little

FlfQsok6

Eviatar - Direct

1 less or a little more, but the bottom line is I've pretty much
2 taken out the names of individuals, and that's it. Let the
3 defense look at it and then you can give it to the plaintiff.

4 MR. ROCHON: The Court is in yellow?

5 THE COURT: Mine is the yellow one on the plaintiff's
6 copy.

7 MR. ROCHON: Thank you.

8 THE COURT: Two other quick things, then we will
9 adjourn.

10 You haven't convinced me yet, and I'm not sure you
11 will, Mr. Yalowitz, that the Abdullah Barghouti statement is
12 admissible. I know you're concentrating on that this statement
13 is not necessarily incriminating of others, but it has a more
14 basic problem. This statement is not even incriminating of the
15 defendant, so it doesn't even qualify as an exception to the
16 rule, and it doesn't even qualify as a statement against
17 interest, the fact that he was released and he went on his way.
18 That's not the crime he was charged with; it's not the crime he
19 pled guilty to; it's not even relevant to or in furtherance of
20 the crime. If your argument is that he was released by them,
21 that's not a crime that he committed. Quite frankly, to be a
22 crime he committed would be their escape. In terms of what you
23 want it to be, I'm not convinced.

24 I'm not so sure -- I'm still looking. I'm not so sure
25 you can't build a legitimate argument consistent with what you

FlfQsok6

Eviatar - Direct

1 want to argue to the extent that it's relevant in this case
2 with regard to his release. Obviously, he was arrested on a
3 certain day, and by a certain day and time he was back on the
4 street. That is basically the argument. I don't know what
5 else anybody cares about how he got out. He was out. I don't
6 know if you want to argue about its inference. Quite frankly,
7 you should all go back to what my recollection was of some of
8 the stuff I highlighted in terms of the conviction, I think
9 some of the indictment and other information in the conviction
10 alluded to the fact he was taken out of prison and went and
11 stayed several weeks with someone, I forget who else, if you
12 know what I'm referring to.

13 MR. YALOWITZ: Yes.

14 THE COURT: And I think even in Ahmed Barghouti's
15 statement, he said that he transferred Abdullah from prison to
16 the Palestinian Authority in Baituniya to an apartment which
17 the defendant had rented in downtown Ramallah. I don't know
18 what you want to argue from that. Obviously, they took him out
19 of prison. They took him to Ramallah. It's obviously already
20 in the case. So the statement itself independently, I don't
21 see the admissibility or the exception to the rule with regard
22 to it. We can discuss it further, but that is my position.

23 MR. YALOWITZ: Let me just give you one more thing to
24 think about on that line. The answer I am thinking about has
25 two sentences. The first sentence is "I stayed in the prison

FlfQsok6

Eviatar - Direct

1 from the time of my arrest till the death of a certain
2 individual." The second sentence says, "Then they released us"
3 or something like that. So the sentence, "Then they released
4 us," I understand consistent with your Honor's earlier rulings,
5 which I disagree with, but will, of course, obey is that
6 statment is not coming in. "They released us" is not coming
7 in, although we might think about redacting the word "they".
8 That's something you might think about consistent with your
9 other rulings.

10 THE COURT: They didn't keep him.

11 MR. YALOWITZ: Right.

12 THE COURT: You can argue whatever you want. We know
13 he was on the street. How he got on the street, we're not
14 going to have a side trial about. We know they didn't keep
15 him, and he's out on the street. He got out pretty quickly and
16 did whatever he did. Beyond that, if you want a stronger
17 inference -- you see, the problem is that you have a more
18 difficult inference. You want to draw -- well, you don't
19 really want to draw that inference but that's an implication.
20 You cannot have the inference that they released him to commit
21 this terrorist act because that's not even a proximity in time.

22 MR. YALOWITZ: That's not the inference I'm heading
23 toward.

24 THE COURT: It's harder for me to debate why it's so
25 relevant for you to try to establish by his own words that

FlfQsok6

Eviatar - Direct

1 somehow -- it really goes more to their state of mind rather
2 than anything else.

3 MR. YALOWITZ: You got it.

4 THE COURT: You're trying to imply that he got out
5 because they decided to let him out, and the fact that they let
6 him out means they're in cahoots with terrorists. That's what
7 you basically want. That's inference upon inference.

8 MR. YALOWITZ: You went exactly where I was going to
9 go. Let me explain it. Your Honor, while you were talking, I
10 was thinking about Judge Posner's comment in the Boim case
11 where he says giving a loaded gun to a child is criminally
12 reckless and the same thing as giving a bomb-maker to Hamas;
13 it's the same idea. It's criminally reckless. It goes exactly
14 to their state of mind.

15 THE COURT: Releasing someone from prison isn't giving
16 him to Hamas.

17 MR. YALOWITZ: I can draw there a link from the Yousef
18 testimony.

19 THE COURT: But I'm saying to you, that's like saying
20 if I release somebody from jail today that the inference is
21 when they rob the bank six months from now that somehow is a
22 reflection on me. That in and of itself is not a reasonable
23 inference. You have to have something else.

24 MR. YALOWITZ: I have to have something else, and my
25 plus is the Yousef testimony. But let me say what I also want,

FlfQsok6

Eviatar - Direct

1 I want another something else.

2 THE COURT: Right.

3 MR. YALOWITZ: The other something else that I want is
4 the date of his --

5 THE COURT: I understand.

6 MR. YALOWITZ: I don't care -- I do care but, I lost
7 this issue.

8 THE COURT: You have no other way that you determined
9 or established in discovery of when it was that he hit the
10 street or when it was that he was arrested or when in
11 relationship to this other guy that he was out there? I would
12 think that there would be some other creative ways to establish
13 that, rather than saying "I want to establish that true fact by
14 his out-of-court statement." Aren't there prison records? I
15 don't know what --

16 MR. YALOWITZ: We don't have prison records.

17 THE COURT: Did he get a parking ticket on Thursday
18 after he was gone? There is usually something out there that
19 shows he's either in jail or he's on the street. You don't
20 have any independent evidence of whether he was in jail or on
21 the street at a particular relevant time?

22 MR. YALOWITZ: We asked for all documents from the
23 defendants, and they didn't give us a single piece of paper.

24 THE COURT: Do you know the day he was arrested?

25 MR. YALOWITZ: He was arrested August 9.

FlfQsok6

Eviatar - Direct

1 THE COURT: So he know he was arrested August 9.

2 MR. YALOWITZ: Well, we know that from -- I don't know
3 how we know that. We know that because he says "I was arrested
4 on the day of the Sbarro bombing.

5 THE COURT: You don't know that any other way other
6 than his statement?

7 MR. YALOWITZ: His statement.

8 THE COURT: You don't know when he was out on the
9 street or when he got out, the day he got out other than his
10 statement that he got out this day?

11 MR. YALOWITZ: That's where we know it from.

12 THE COURT: You see, that is the thing too: You want
13 an inference that he got out on the day of a terrorist attack.

14 MR. YALOWITZ: No, no. He went in on the day of his
15 terrorist attack.

16 THE COURT: Right.

17 MR. YALOWITZ: And he got out three weeks later on the
18 day when the Israel defense forces killed an alleged terrorist.

19 THE COURT: OK. So who cares? I mean -- I don't say
20 it like that, who cares, but why is that relevant because they
21 released him on the day they killed a terrorist?

22 MR. YALOWITZ: Because they issued a statement saying
23 the death of this guy will lead to more violence.

24 THE COURT: I know, but it only gets you there if you
25 get the inference that you say you're not trying to draw.

FlfQsok6

Eviatar - Direct

1 You're not trying to draw the inference that they let him go to
2 commit that violence, the terrorist act at issue here. That is
3 not why you say they let him go. Quite frankly, in between
4 this terrorist act and when he was released and even after this
5 terrorist account there's no evidence he committed another
6 terrorist act, so I'm not sure what --

7 MR. YALOWITZ: Wait a minute. 20 second time-out.
8 First of all, the inference that I want from the statement in
9 the Intifada diary saying Mustafa has been killed, they're
10 going to pay, again, goes to state of mind because I'm not
11 saying, "Therefore, we're going to bomb Hebrew University."
12 It's just "they're going to pay." So really it goes to state
13 of mind. That is the first thing.

14 The second thing -- OK, so you get it, you get my
15 thesis and you get how I --

16 THE COURT: Even if you've got that inference, you can
17 only have that inference if he was released after they made
18 that statement. After he was arrested. You say he was
19 released on the day that they arrested someone.

20 MR. YALOWITZ: No, no, I'm trying to get it clear.

21 THE COURT: He doesn't say, "I was released after they
22 heard that he was arrested" or "I was released because he was
23 arrested."

24 MR. YALOWITZ: You mean assassinated.

25 THE COURT: I mean assassinated. He doesn't say that.

FlfQsok6

Eviatar - Direct

1 MR. YALOWITZ: That's a question for the jury.

2 THE COURT: If he was assassinated in the afternoon
3 and he was released in the morning, you don't have that
4 inference, but you can't even tell me when he was released that
5 day.

6 MR. YALOWITZ: That would certainly be Mr. Rochon's
7 argument to the jury.

8 THE COURT: Think about it. Those are your hurdles.
9 That's all I'm saying. Think about if you have some way to
10 overcome that, then tell me. At this point, again, it's just
11 sort of rank hearsay when he got released and who released him.
12 It really is. It's not even a statement against interest. I
13 don't know even know what the exception to the hearsay rule is.

14 MR. YALOWITZ: Let me give it to you because this goes
15 to the other thing, which is it's not correct that he was
16 sitting selling vegetables from August 27, 2001 till the Hebrew
17 University bombing. He was not selling vegetables; he was
18 making bombs.

19 THE COURT: Right.

20 MR. YALOWITZ: And he got admitted to and was
21 convicted of making bombs in November, December, March, May,
22 June, July, so he has a string of -- his story which he tells
23 the police is "I got out of jail and I started making bombs."

24 THE COURT: Right, but he didn't commit a terrorist
25 act until the bombing at issue here after he was released.

FlfQsok6

Eviatar - Direct

1 MR. YALOWITZ: Not correct. Not correct.

2 THE COURT: What incident was he involved in?

3 MR. YALOWITZ: December 1. So he gets out at the end
4 of August. He's in the safe house. He's in the protection of
5 Marwan Barghouti according to his statements. Then he makes
6 bombs for Marwan Barghouti. Then he makes bombs for Hamas and
7 they blow up three suicide terrorists in December.

8 THE COURT: OK.

9 MR. YALOWITZ: Then he makes bombs, and they blow
10 up -- so he's on a killing spree.

11 THE COURT: I understand. I don't want to go into too
12 much more detail. If you want to say something briefly now,
13 but if you want to convince me --

14 MR. ROCHON: I think you've given Mr. Yalowitz a lot
15 of opportunities to argue this point, your Honor, and I don't
16 have anything to add right now. We still don't think it is
17 admissible.

18 THE COURT: Let me move quickly so we can resolve
19 tomorrow and save ourselves some time.

20 Exhibit 212, do you want this for any other purpose
21 other than the ones they object to?

22 MR. YALOWITZ: I'd be happy with the ones they object
23 to. I could live with myself to those.

24 THE COURT: Whether we could live with you is the
25 question. Is that the purpose you want these or does it have

FlfQsok6

Eviatar - Direct

1 some other relevant purpose?

2 MR. YALOWITZ: I take it back, there is even more
3 stuff, but the ones they object to are the best ones.

4 THE COURT: That's what you really want this for.

5 MR. YALOWITZ: Let me be clear. I am not saying that
6 somebody committed a terrorist act wearing a military uniform.
7 I will stipulate I have no evidence that any of them was
8 wearing a military uniform.

9 THE COURT: Right. But you want the implication that
10 because he is characterizing these as military detainees, that
11 somehow that is supposed to imply that they were in the course
12 of their employ on behalf of their employer when they were
13 arrested or for whatever they were arrested for.

14 (Continued on next page)

Flf3sok7

1 MR. YALOWITZ: I actually have a less ambition
2 purpose. My purpose is the number of people in the military
3 who 10 years after the intifada are still in prison.

4 THE COURT: On salary?

5 MR. YALOWITZ: Still in prison on salary.

6 THE COURT: That's relevant. I guess I don't have any
7 problems with that.

8 MR. ROCHON: Judge, we have problems with the word
9 "still." How many of those were arrested since the intifada?
10 This statement is made in 2012.

11 THE COURT: I can tell you that --

12 MR. ROCHON: When he says they're still in prison.

13 THE COURT: I can tell you that the statement is that
14 800,000 citizens were arrested and incarcerated. That's the
15 number. 800,000. And their number of military detainees is
16 700.

17 So, be careful what you both ask for. You may get it.
18 The jury may find this useful for some purpose that you didn't
19 anticipate. That's what this thing says. It says 800,000
20 people have been detained by the military -- or by, well, to be
21 more specific, it says there have been 800,000 prisoners and
22 that --

23 MR. ROCHON: It says since 1967.

24 THE COURT: Right. Since 1967 they estimated around
25 800,000 citizens have been arrested and detained. This first

Flf3sok7

1 page talks about 700 people who are currently detained, but
2 they are characterized as military detainees.

3 Quite frankly, I don't know who is going to define
4 term "military detainees." I don't know what that means. I
5 don't know what that means. That they were in the military
6 force of the PA, that they were taking a military stance, that
7 they were engaged in some physical conflict. I don't know what
8 that means. I don't know what you think they're trying to say
9 here.

10 So, my position at this point is, unless you can give
11 me two things, a real strong argument that there is some
12 probative evidence in this, and/or you can come to some
13 agreement with the other side that you're willing to redact
14 those portions that they're primarily concerned about so you
15 can have other portions that you think are not inconsistent
16 with the facts but give you a stronger basis to argue your
17 point.

18 I don't think this is appropriate for the jury to just
19 to infer that somehow this is an acknowledgment that the people
20 who are in prison are in prison, one -- I have to say it this
21 way -- in prison because they were people who are in the
22 military, uniformed military who were detained because they
23 were involved in terrorist acts. This doesn't say that at all.
24 I don't know why those 700 people were detained. And you can't
25 imply they were detained because they committed terrorist acts.

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1 That's not even a reasonable inference. There is no basis to
2 infer that. They could have been detained, they could have
3 been questioned, they could have been material witnesses, they
4 could have been people who got into a conflict with somebody.
5 As you say, threw a stone. I don't know who these people are
6 and why they're incarcerated for a long time or short time.

7 So you'll have to point to me what is the real
8 important evidence that you want. And I got a document here
9 that's I don't know how many pages, but I think there is grave
10 dangers for both sides, and I'm not going to take the risk that
11 the jury is going to take this for an improper purpose and
12 maybe an improper purpose that may be to the disadvantage of
13 the party that wants the document to go before the jury for
14 another purpose.

15 MR. YALOWITZ: All right. I think I understand the
16 Court's ruling. I am going to take a look at the document and,
17 certainly, the subject matter how many Palestinian Authority
18 police officers committed terror crimes and are still in jail
19 today on the payroll of the PA, that's an interesting and
20 useful fact.

21 THE COURT: It ain't in this document.

22 MR. YALOWITZ: It may be --

23 THE COURT: It is not in this document. There is
24 nothing that says anything about military people committing
25 terrorist acts. It doesn't say that. They could have gotten

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1 in a fight on the street with a police officer. I don't know
2 what they're in jail for.

3 And I assume you would acknowledge that all 700 of
4 these people can't possibly be in jail because they were
5 convicted of committing terrorist acts in the uniformed
6 military.

7 MR. YALOWITZ: Actually, your Honor, I think the
8 evidence will show -- well, I think that what I'd like to do is
9 work on this fact issue. Or, it is not really exactly a fact
10 issue. It is not a core fact issue. But the issue for me is
11 how common was it to commit these crimes.

12 THE COURT: Which crimes?

13 MR. YALOWITZ: Terror crimes.

14 THE COURT: That's the problem. This document doesn't
15 refer to any crime.

16 MR. ROCHON: May I interrupt for a second?

17 MR. YALOWITZ: No.

18 THE COURT: This is his burden, okay. So I want to
19 let him know what my concerns are. If you can satisfy those,
20 you will get it. But this document doesn't even reference a
21 single crime. It doesn't tell us anything about why these
22 people are legitimately or illegitimately detained. I don't
23 know. To simply say they are a person who is detained in
24 uniform is not the inference that they committed terrorist acts
25 as employees of the PA or on behalf of the PLO. You can't get

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1 that inference from that document.

2 MR. YALOWITZ: Let me tell you where I agree with what
3 you're saying, and what additional information I think we need
4 to deal with.

5 I agree that reading this document alone, cold, with
6 no context and no understanding of what it means to be in
7 prison as of the date of this statement, is not, standing
8 alone, it is not useful information. I agree with that.

9 The only way to understand that statistic, which is
10 not the only place it exists, but that 700 statistic, the only
11 way to understand it is to understand the context of the
12 military apparatus, to understand who is saying it, and to
13 understand why they're saying it. To understand what it means
14 to be incarcerated in an Israeli prison at the date of this
15 statement and other statements like that.

16 Frankly, I can do all that with an expert without the
17 document.

18 THE COURT: The problem you have is that when you say
19 "as the date of this document." You talk about 700, quote,
20 military detainees as of January 21, 2012. I'm not sure any
21 one of these people were in jail in 2002. That's 10 years
22 later. I can't even make a reasonable assessment of whether
23 these people were incarcerated during the relevant period of
24 time. So what does that got to do with making it more likely
25 than not that in 2002 they were involved in terrorist acts,

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1 which this doesn't say.

2 MR. YALOWITZ: That's another reason why the document
3 standing alone isn't all that interesting.

4 THE COURT: Unfortunately, you give it to me standing
5 alone, because I didn't have any other evidence at this point
6 to relate it to. And reading the document in itself it is not
7 a proper inference to draw that somehow these people are
8 involved in terrorist acts, somehow this reflects the PA or the
9 PLO's approval of terrorist acts. Somehow it reflects that
10 they were committing terrorist acts because they are in the
11 military, or that's their job in the military. All of those
12 inferences are not proper inferences from this document. So
13 alone --

14 MR. YALOWITZ: Standing alone. Okay.

15 THE COURT: Mr. Rochon, you can have the last word and
16 then we'll adjourn.

17 MR. YALOWITZ: I understand the Court's concerns, and
18 rather than address it in the abstract, I think what we need to
19 do is deal with the concepts with the witness, and then we can
20 evaluate whether we even need the document.

21 MR. ROCHON: Your Honor, as to these documents and as
22 to the notion they are going to explore the concepts with the
23 witness, the danger of the documents and the concern about the
24 exploring the concepts with the witness is that a state of mind
25 of an entity being proved through this kind of evidence is

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1 especially problematic. It is not an appropriate province for
2 an expert witness, as the Court knows from the cases we put
3 before you in connection with Daubert and on the Second
4 Circuit.

5 Much of what Mr. Yalowitz is trying to do is put in
6 documents that say one thing, and then to try to argue the
7 state of mind of my clients, which is not reflected directly in
8 the documents, and it enters the realm of both speculation, and
9 you've identified the dangers of these documents, your Honor,
10 and it extends not only to these two sets we've talked about
11 for the last 20 or 30 minutes, but even as to some of the
12 testimony that he's going to apparently seek. And I think the
13 Court should be cautious about how the plaintiffs are going
14 about trying to prove the state of mind, which is a critical
15 element in this case.

16 THE COURT: I would hope that you will continuously
17 try to put these issues before me as early as possible.
18 Because, as I say, if I have 30 seconds to make a decision, you
19 are going to get 30 seconds worth of thought. Give me as much
20 advance in writing on these issues so we can resolve these
21 issues and I can think about them and look at the documents.
22 I've looked at a lot of documents, so you see I read the stuff
23 you give me. It is not like it's osmosis. I put it up against
24 my head and it soaks in.

25 MR. YALOWITZ: Just to be clear --

Flf3sok7

1 MR. ROCHON: I thought I was going to get the last
2 word. I was so close.

3 Go ahead.

4 MR. YALOWITZ: I promise I'll give him the last word,
5 but I want to be clear on one thing. It is actually to
6 Mr. Rochon's benefit that I tell him this. I'm not --

7 THE COURT: You like his tie?

8 MR. YALOWITZ: Not really.

9 MR. ROCHON: Johnston & Murphy. It is not a nice tie.

10 THE COURT: Let's wind up.

11 MR. YALOWITZ: It is actually a really simple and
12 highly relevant fact, which is it goes to are they rogue
13 employees or is it within the scope of employment. If hundreds
14 of people or dozens of people are doing this, and they don't
15 get fired, that seems like a relevant fact. That seems to make
16 it more likely they were acting within the scope of employment.

17 THE COURT: You can argue that, but as they say, I
18 don't have any evidence.

19 MR. YALOWITZ: I don't think --

20 THE COURT: In this document.

21 MR. YALOWITZ: I don't think your concern was
22 relevance. I think your concern was other things.

23 MR. ROCHON: Judge, that's what he said he wasn't
24 going to do a little while ago. This is exactly that.

25 I did get the last word. Good night, your Honor.

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1 Thank you.

2 THE COURT: Have a good evening.

3 (Adjourned until January 16, 2015, at 9:30 a.m.)

INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

NICHOLAS KAUFMAN

Cross By Mr. Satin	346
------------------------------	-----

ALON EVIATAR

Direct By Mr. Yalowitz	363
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PLAINTIFF EXHIBITS

Exhibit No.	Received
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1151	414
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532	418
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1152	455
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171	460
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1127	465
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958	474
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173	478
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20	480
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104, 105, 106, 108	483
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1153	490
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512	494
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